



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

MISC CASE NO. 427 OF 2013

DESAI SARVIA & PALLAN ADVOCATES.....APPLICANT

VERSUS

TAUSI ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. The applicant, **DESAI SARVIA & PALLAN ADVOCATES**, is a Law Firm. It has moved the court by way of a Notice of Motion, pursuant to Section 51 (2) of the Advocates Act, as read together with Order 51 Rule 1 of the Civil Procedure Rules.
2. The application is for the grant of judgment in favour of the applicant, in accordance with the Certificate of Taxation dated 21st August 2014.
3. According to the applicant, there had be no attempt by the Respondent, **TAUSI ASSURANCE COMPANY LIMITED**, to challenge the Certificate of Taxation.
4. It is common ground that the Bill of Costs was taxed in the sum of Kshs. 222,854.
5. The Respondent reckons that the Certificate of Taxation constitutes the final amount which is payable by the client to the advocate.
6. But the advoate asks the court to order the client to pay interest at the rate of 14% per annum, from 22nd September 2013 until 27th August 2014. If that claim for interest was allowed, it would increaase the sum payable by Kshs. 28,977/13.
7. It is also the advocate's submission that the firm was entitled to the costs incurred when they put forward the present application for judgment. In that regard, the law firm asks the court to grant it the sum of Kshs. 5,000/-.
8. But the client says that the advocate is not entitled to either interest or to the costs for the present applicaiton.
9. It is noteworthy that the application before me was filed on 2nd of September 2014.
10. Before the Law firm filed the application, the client had remmitted payment to the law firm. The amount of money that was remmitted was equal to the exact taxed costs.
11. In effect, by the time the law firm was asking the court to grant it judgment, the client had already paid the taxed costs. In my considered view, the basic claim payable by the client, had already been settled.
12. The Law firm confirmed, in its submissions, that it received payment of the taxed costs on 27th August 2014. Consequently, the client did not owe the principal sum thereafter.
13. In those cirumstances, it would not have been open to the Law firm to still demand a sum which had already been paid to it. I say so because a party is only entitled to judgment in respect to a claim that was still due and payable by the person against whom the claim was made.
14. I cannot therefore grant judgment in favour of the firm when the principal sum it is claiming was

- settled before the firm moved to court.
15. But what about the issue of interest payable on the taxed costs?
16. Pursuant to Rule 7 of the Advocates Remuneration Orders;

“An Advocate may charge interest at 14 % per annum on his disbursements or costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.

17. The Law firm cited the decision in **KANTAI & COMPANY ADVOCATES VS KENYA BUS SERVICES LIMITED [2006] e KLR** as authority for the proposition that interest was payable from the expiry of one month from the date when the Bill was delivered to the client.
18. In this case, the Law firm delivered the Bill to the client on 22nd August 2013. Therefore, one month was said to have expired on 22nd September 2013. It is on that basis that the Law firm claimed interest at the rate of 14% per annum from 22nd September 2013 until 27th August 2014 (when the principal sum was paid).
19. The Law firm gave written Notice to the client that if the Bill remained unpaid for 30 days from 22nd August 2013, it would attract interest at the rate of 14% per annum.
20. The client did not settle the Bill. Thereafter, the Law firm filed its Advocate & client Bill of costs in court, on 1st October 2013.
21. One of the claims made in the said Bill of costs was for Interest at the rate of 14 % per annum, from 23rd August 2014. Clearly, therefore, by inserting that claim in the Bill of costs, the Law firm must be deemed to have acknowledged that interest did not automatically begin to accrue after the lapse of 30 days from the date when the Bill was presented to the client.
22. The record of the proceedings shows that both parties made elaborate submissions on the issue of costs, when the matter was before the Taxing Officer. On the one hand, the Law firm continued to urge the Taxing Officer to find that it was entitled to an award of interest, in accordance with Rule 7 of the Advocates (Remuneration) Order.
23. On the other hand, the client reasoned that the issue of Interest ought not to be addressed during Taxation. It was the client’s view that the issue of interest ought to be addressed at the time of determining the application under Section 51 (1) and (2) of the Advocates Act.
24. In the light of the client’s said submissions above, I find it surprising that the client was now telling this court that the Law firm’s claim for interest was not allowed by the Taxing Officer. If the client’s reasoning during the process of taxation was accurate, then the Taxing Officer would have been wrong to abrogate to herself the power to adjudicate on the question of interest.
25. We now need to give consideration to the Ruling by the Taxing Officer, to ascertain whether or not the claim for interest was disallowed.
26. The Taxing Officer said;

“Interest and further VAT are not payable at this point”.

27. In my understanding, that did not constitute an absolute rejection of the claim for interest. If anything, the Ruling appears to be in line with the client’s contention, that interest on the taxed costs could only be adjudicated upon when the Court was determining an application under Section 51 of the Advocates Act.
28. I now find and hold that;
- a. *The Law firm did demand interest on the amounts set out in the Bill which it delivered to the client.*
 - b. *As the Bill was delivered on 22nd August 2013, the Law firm became entitled to interest at the rate of 14% per annum from 23rd September 2013. However, as at that date, the fees payable by the client had not been ascertained. Therefore, it would be unfair to compel the client to pay interest on the un-ascertained sum.*
 - c. *The client paid the taxed costs within 30 days of the Ruling on Taxation; and within 7 days of the*

- issuance of the Certificate of Taxation.*
- d. *Although the client acted promptly in settling the taxed costs, there had always been room for the client to have, earlier, tendered to the Law firm, the payment of such fees as the client deemed justified. That is particularly so, considering that, in principle, the sums claimed in the Bill of costs did not meet violent objections from the client.*
 - e. *The justice of the case demands that I award interest on the taxed costs at 14% per annum, for five (5) months. I have reduced the period from the eleven (11) months, in acknowledgement of the quick payment of the taxed costs, whilst also bearing in mind the right of the Law firm to recover interest.*

29. Finally, I order each party to bear its own costs, as each of them has been partially successful.

30. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of January 2015.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

..... for the Applicant.

..... for the Respondent.

Collins Odhiambo – Court clerk.