



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC CAUSE NO 363 OF 2007

MURIU MUNGAI & CO ADVOCATES.....ADVOCATE

VERSUS

NEW KENYA CO-OPERATIVE CREAMERIES LIMITED.....CLIENT

RULING

1. The Advocate's Notice of Motion application dated 18th March 2007 and filed on 27th March 2007 was brought under the aegis of Section 51(2) of the Advocates Act, Cap 16 of the Laws of Kenya, Section 26 of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, Rule 7 of the Advocates (Remuneration) Order and all other enabling provisions of the law. It sought the following orders:-
 1. **THAT judgment be entered for the Applicant against the Respondent in the sum of Kshs 58,995/=.**
 2. **THAT the Applicant be awarded interest at the rate of 14% per annum on the said sum of Ksh 58,995/= from 28th April 2007 until payment in full.**
 3. **THAT the Applicant be awarded interest at the rate of 12% per annum of the said Kshs 58,995/= from the date of the judgment of this court to the payment in full.**
 4. **THAT the costs of this application be borne by the Respondent in any event.**

THE ADVOCATE'S CASE

2. The application was premised on the grounds on the face of the application and further supported by the affidavits sworn by Peter Munge and Peter M. Murage on 18th March 2014 and 16th June 2014. They were filed on 27th March 2014 and 24th June 2014 respectively. It averred that the Bill of Costs dated 23rd February 2007 was taxed in favour of the Applicant, with no reference being filed in respect the taxing master's decision of 24th May 2007 and that the Respondent had failed, refused and/or neglected to settle the taxed amount.

THE CLIENT'S CASE

3. In opposition to the said application, on 9th June 2014, Peter Ombati swore a Replying affidavit on behalf of the Client. The same was filed on 10th June 2014. The Client was principally not opposed to the entry of judgment of the taxed amount but rather to the grant of interest on the taxed amount. It reiterated that the Applicant had been paid the sum of Kshs 27,132,053/= and that

the taxed amount should thus be deducted from the payment already made.

4. The Client's written submissions were dated 11th September 2014 and filed on 12th September 2014.

LEGAL ANALYSIS

5. From the submissions by the Client, the issue that appeared to be before the court for determination was really whether or not the Advocate should be awarded interest on the claim of Kshs 44,889/= as per the taxed bill of costs dated 24th May 2007. It was emphatic that interest was not payable because the amounts due to the Advocate had already been paid before the filing of the Bill of Costs.
6. The Client did indicate in its submissions that judgment could be entered in favour of the Advocate for the sum of Kshs 44,889/= but prayed for a stay of execution pending reconciliation of accounts for various taxations as there could be need for the Advocate to refund it the excess amounts it would have paid.
7. The Advocate referred the court to the cases of **Misc Application No 1084 of 2006 A M Kimani & Co. Advocates v Kenindia Assurance Co. Ltd [2007] eKLR** and **Misc Application No 859 of 2005 Kantai & Co. Advocates v Kenya Bus Services Limited [2006] eKLR** to support its argument that it could charge interest on the costs that it had been awarded as was provided for under Rule 7 of the Advocates (Remuneration) Order.
8. Rule 7 of the Advocates Remuneration Order provides as follows:-

“ An advocate may charge interest at 14% per annum on his disbursements and 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.”

9. It is clear that the said Rule 7 deals with interest charged by an advocate of its claim for disbursements and costs which is chargeable from the expiration of one (1) month from the date of his delivery of its bill to its client. This interest is distinguishable from the interest that this court can award.
10. The Client did not file a reference under Paragraph 11 of the Advocates Remuneration Order to oppose the decision of the Taxing Master. Its submission that it had made payment of Kshs 27,132,053/= would not arise at this particular juncture or at all as that was an issue that should have been dealt with during the taxation by the Taxing Master. Indeed, the question of what items the monies comprised of would also not concern this court at this point. Once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling, no other action would be required save for entry of judgment.
11. Indeed, Section 51 (2) of the Advocates Act Cap 16 (Laws of Kenya) provides that:-

“the certificate of costs shall be final as to the amount of costs and that the court may make such order in relation thereto as it thinks fit including in a case where the retainer is not disputed, an order that judgment be entered for the sum certified for the sum certified to be due with costs.”

12. This court thus has jurisdiction under Section 51(2) of the Advocates Act to make any order that it deems fit. Entry of judgment and award of interest at court rates is within the ambit of what this court can do. However, an applicant forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order if the same was not raised in the Bill of Costs. A perusal of the Advocate's Bill of Costs showed that the Advocate did not demand for interest. It would therefore be entitled to the interest on the amount in the Certificate of Costs. The Client's submissions that the Advocate would not be entitled to interest would thus fall by the wayside.
13. The decision by Mabeya J in **Misc Application No 799 of 2007 Murui Mungai & Co Advocates vs Kenya Co-operative Creameries Limited** in which he is said to have held that the parties were to reconcile all taxation and matters between the parties was not furnished to this court. The Client did not furnish the court with the said Ruling, if at all. It was therefore not clear to this court

whether the matter herein was part of the series that the said learned judge stayed. In the absence of any evidence to the contrary, the court finds that it can make a finding in this matter and is not bound by the decision of the said judge as both courts are of equal and competent jurisdiction.

14. Having considered the pleadings, affidavit evidence, written submissions and case law in support of the respective parties' cases, the court finds and holds that it would be onerous for the court to stay the judgment herein as parties reconcile accounts at a time that is not known when the Client had obviously enjoyed the services of the Advocate and conceded that judgment could be entered in the sum of Kshs 58,955/=.

DISPOSITION

15. Accordingly, the upshot of this court's ruling is that the Advocate's Notice of Motion application dated 18th March 2014 and filed on 27th March 2014 was merited and the same is hereby allowed in terms of prayer No (3) and (4) therein.

16. It is so ordered.

DATED and DELIVERED at NAIROBI this 19th day of January 2015

J. KAMAU

JUDGE