



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION, MILIMANI
MISC. APPLICATION NO. 588 OF 2007

MEREKA & CO. ADVOCATES.....ADVOCATE/APPLICANT

V E R S U S

**INVESCO ASSURANCE COMPANY
LIMITED.....CLIENT/RESPONDENT**

RULING

This is an application by an advocate under section 51 (2) of the Advocates Act, Cap. 16 Laws of Kenya (the Act) seeking an order that judgment for taxed costs be entered. Interest at 14% from date of certificate of taxation is also sought. There is also a prayer that the advocate be at liberty to execute. The application is supported by the affidavit of the advocate sworn on 29th October 2014.

Grounds of opposition were filed on 2nd March 2015. The main reason for opposing the application emerging therefrom is that –

- i. Interest at 14% cannot be granted as section 51(2) of the Advocate’s Act makes no provision for interest;
- ii. The advocate has been indolent in seeking costs presumably with the intention of having interest on costs accumulate;
- iii. The applicant has not exhibited proof of retainer;
- iv. The applicant is barred by Section 4(4) of the Limitation of Actions Act (Cap 22) as the claim for interest exceeds the period of 6 years allowed by statute.

The application was heard by way of written submissions. The court has considered the submissions of the both counsel.

Section 51(2) of the Act provides –

“The certificate of the taxing master by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of costs covered thereby...”

The certificate of costs herein has not been set aside or altered. There is no dispute as to retainer as the letter of instructions exhibited by the Advocate clearly shows they had instructions to represent the Client in the matter. In any case, the Client did not deny the averments in the application as a replying affidavit was not filed. This failure amounted to admission of facts on the present application. See the case of **Kennedy Otieno Odiyo & 12 Others vs Kenya Electricity Generating Company Limited [2010]**

eKLR

Rule 7 of the Advocates (Remuneration) Order provides –

“An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, 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.”

That rule therefore deals with interest charged by an Advocate of its claim for disbursements and costs and is payable before the bill is paid.

What remains for the Court to decide is whether the Advocate is entitled to this interest and at what rate in light of the Limitation of Actions Act (Cap 22). Section 4(4) of that Act provides –

“(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

Once the bill of costs has been taxed, it becomes a judgment of the court and therefore, Section 4 of the Limitation of Actions Act which provides that no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due is applicable in this case. The present application was filed six (6) years eight months after delivery of the certificate of taxation. In the circumstances, the costs as taxed are recoverable but the interest accrued on the costs is time barred.

The learned counsel is therefore entitled to payment of the taxed costs and in the event that is not effected within 14 days from the date hereof, execution proceedings should follow.

The applicant shall also have the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 22th Day of April, 2015.

A.MBOGHOLI MSAGHA

JUDGE