



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. MISC. NO. 134 OF 2014

ANTHONY THUO KANAI T/A A. THUO KANAI ADVOCATES.....PLAINTIFF

VERSUS

VISHISHT TALWAR.....DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 25th August 2014 in which the Applicant/Advocate seeks for orders as follows:

1. That judgment be entered for the sum of Kshs. 2,943,773.52 in costs as certified by the Deputy Registrar on 6th August 2014.
2. That the said sum of Kshs. 2,943,773.52 be paid with interest at the rate of 14% per annum from 10th May 2013 being one month after serving the demand letter and fee note specifying that interest will be charged on the costs until payment in full pursuant to Rule 7 of the Advocates (Remuneration) Order, 2009.
3. That the costs of this application be provided for.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Anthony Thuo Kanai sworn on 25th August 2014 in which he averred that the Respondent/Client instructed him to act for him as the vendor in an Agreement for Sale and Transfer in respect of property known as L.R. No. 4275/121. He further averred that on the 10th of April 2013, he forwarded to the Respondent his fee note dated 10th April 2013 requesting him to pay his legal fees and specifically advised him that the fees would attract interest at 14% per annum in accordant with the Advocates Remuneration Order in default of payment. He further averred that on 6th May 2014, he filed a Bill of Costs to recover his fees whereby the fees were taxed at Kshs. 2,943,773.52 on 31st July 2014. He further stated that the Respondent neglected to pay the said sum which accrues interest at 14% per annum from 10th May 2013 under Rule 7 of the Advocates Remuneration Order. He further stated that the Deputy Registrar certified the taxed amount on 6th August 2014 and that to date the Certificate of Taxation has not been set aside or altered. He concluded by stating that the Applicant/Advocate now wishes to commence execution proceedings against the Respondent and the same can only be done once the taxed costs have been endorsed as the judgment of this honourable court.

The Respondent did not file a Replying Affidavit but instead filed his written submissions wherein he admitted having paid the Applicant/Advocate a sum totaling Kshs. 2,943,773.52 as per the Certificate of Taxation on 30th January 2015 by cheques. However, the Respondent contests the claim by the Applicant to be paid interest on the taxed amount at the rate of 14% per annum from 10th May 2013 stating that this claim was not supported in the Certificate of Taxation nor was it granted by this court in the first place. He contended that the Certificate of Taxation is final as to the amount of costs covered.

As prayer no. 1 of this Application is now spent, the issue I am called upon to determine is whether the Applicant is entitled to interest on the taxed amount of Kshs. 2,943,773.52 at the rate of 14% per annum from 10th May 2013 to 30th January 2015 when the taxed amount was paid by the Respondent to the Applicant and further, who shall bear the costs of this application. The relevant legal provision on this point is Rule 7 of the Advocates Remuneration Order which provides as follows:

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

To my mind, this legal provision is abundantly clear that an Advocate is entitled to charge interest on his legal fees at the rate of 14% per annum until payment in full. The only proviso given is that the Advocate raise this claim before the bill is paid in full. So far as I can tell, the Applicant/Advocate in this matter has complied with that requirement. It therefore follows that the Respondent is obliged to pay the interest claimed by the Applicant/Advocate. I do so find.

In the circumstances, I hereby allow the Application with costs to the Applicant/Advocate.

DELIVERED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2015.

MARY M. GITUMBI

JUDGE