



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 218 OF 2012

FRANCIS MWANZIA MULWA.....PLAINTIFF

VERSUS

- 1. FRANCIS MBURU MUNGAI**
- 2. AGRICULTURE SYNDICATE LIMITED**
- 3. SILVERKING LIMITED**
- 4. AFRICAN PETALS LIMITED**
- 5. TROPICAL NECTAR LIMITED**
- 6. DRIVE-IN ESTATE DEVELOPERSLIMITED.....DEFENDANTS**

RULING

The Plaintiff brought this suit against the Defendants seeking one main relief that they be held liable jointly and severally to pay Kshs. 8,973,500/-, costs and interest on both from 25th April 2012 until payment in full.

The Plaintiff's case as set out in the plaint dated 25th April 2012, is that the Plaintiff offered legal services to the Defendants and by written agreement was to be paid Kshs. 7,775,000/- in consideration within 90 days of the said agreement; that under the provisions of the Advocates Remuneration Order then in force, the Plaintiff was entitled to interest on the said sum at the rate of 9% per annum.

When the matter came up for hearing, the following consent was recorded –

“By consent:

- (i) The certificate of costs dated 4th March 2015 be and is hereby set aside.**
- (ii) The costs payable to the Plaintiff be assessed at Kshs. 80,845/-**
- (iii) Payment of Kshs. 9,054,345/- be made by the Defendants to the Plaintiff within 30 days**

from today failure of which execution to proceed.

(iv) Parties to file submissions on the issue of the interest relating to the period between the filing of the suit to the delivery of judgment within 14 days.

(v)

The parties subsequently filed written submissions. Therefore, this ruling concerns only the issue of interest.

I have considered the submissions of the parties. No cases were cited. The Plaintiff has submitted that the Defendants should pay interest at least from the date the suit was filed at the rate of 14% because Schedule 7 of the Advocates Remuneration Order 2009 provides that an Advocate may charge interest at 14% per annum on his disbursements and costs.

On their part, the Defendants argue that when an Advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. They further argue that the court can only award interest at court rates.

Interest is at the discretion of the Court. **Section 26(1) of the Civil Procedure Act, Cap 21 (the Act)** states as follows –

“26. (1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit”.

As the claim was liquidated, interest is payable from date of filing suit as the Plaintiff had been deprived of the amount due to the wrongful act of the Defendant.

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.”

Therefore, interest should be charged after expiration of one month from the time the Advocate delivers his bill to the client. The Plaintiff in his submissions did not produce any evidence to show that he delivered his bill to the Defendants and when that was done.

The high court in the case of **Muri Mwaniki & Wamiti Advocates v John Ngigi Ng'ang'a & another (2014) eKRL** stated as follows when dealing with interest -

“My understanding of Rule 7 of the Advocates Remuneration Order is that interest is chargeable from the expiration of one month from delivery of the bill of costs by the advocate to the client but before the amount of the bill has been paid or tendered in full. Evidence of delivery is necessary.....

To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the certificate of costs but the bill of costs...The amount of the bill may be different from the taxed costs. But for all purposes of Rule 7 of the Advocates Remuneration Order, interest should be on the amount in the certificate of costs as those are the costs which are payable.”

There being no evidence tendered to demonstrate whether the Plaintiff served the Defendants with a bill

of costs and when the same was done, the Plaintiff shall be awarded interest at court rates from the date of filing suit.

Order accordingly.

Dated, signed and delivered at Nairobi this 21st day of July, 2015

A. MBOGHOLI MSAGHA

JUDGE