



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL CAUSE NO. 226 OF 2013

IN THE MATTER OF AN ADVOCATE – CLIENT BILL OF COSTS

BETWEEN

OTIENO, RAGOT & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

AND

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT/CLIENT

Arising from Nyando SRMCC No. 114 of 2002

SOSPETER O. AWUOR PLAINTIFF

VERSUS

EQUATOR BOTTLERS LTD. & ANOTHER DEFENDANT

RULING

This is a ruling on the Advocate/Applicant's Notice of Motion dated 16th July 2014 seeking orders that the Certificate of Costs herein dated 22nd May 2014 be adopted as a judgment and decree of this Court together with interest thereon at 14% per annum from 10th November 2013 until payment in full.

The application was vehemently opposed principally on the ground that the Client/Respondent being dissatisfied with the findings of the taxing officer filed a notice of objection on 3rd June 2014 and sought reasons to enable her to file a reference which reasons have not been furnished and should this application be allowed the Client/Respondent shall be greatly prejudiced.

Although parties had agreed to canvass the application by way of written submissions only those of the Advocate/Applicant were received.

Relying on **Evans Thiga Gaturu V. Kenya Commercial Bank Limited [2012] eKLR** counsel for the Advocate/Applicant submitted that as the Client/Respondent had not put in enough effort to obtain the reasons and as there was no doubt that the services in issue were rendered it is in the interest of justice that the applicant be paid their costs. Counsel argued that justice delayed is justice denied.

Counsel further submitted that the interest charged is payable under Rule 7 of the Advocates Remuneration Order. On this he relied on the decision of **Gikonyo J. in Muri Mwaniki Wamiti**

Advocates V. John Ngigi Nganga & Another [2014] eKLR.

Paragraph 11(1) of the Advocates Remuneration Order gives a party who is dissatisfied with the decision of a taxing officer 14 days to file an objection in writing stating the items objected to. Paragraph 11(2) requires the taxing officer to give his reasons forthwith and upon receipt of these reasons the party aggrieved must file his reference within 14 days.

The record here shows that the taxing officer, the late Hon. Atonga, may his soul rest in peace, rendered his decision on 22nd May 2014. The record also shows that on 4th June 2014 the Advocate for the Client/Applicant filed a Notice of Objection stating clearly the items objected to and seeking the reasons of the taxing officer thereon. This Notice of Objection was filed within time as stipulated under paragraph 11(1) of the Advocates Remuneration Order. However instead of rendering his reasons the taxing officer went ahead to sign and issue the Certificate of Costs dated 11th June 2014 and which is now sought to be adopted as a judgment. In **Evans Thiga Gaturu Advocate V. Kenya Commercial Bank Limited [2012] eKLR** Odunga J. acknowledged that the interpretation of the Courts on the issue of giving reasons is varied. On his part he expressed the view that where no reasons appear on the face of the decision of the taxing master it is only prudent that such reasons be furnished but where there are reasons on the face of the decision it would be futile to expect the taxing officer to furnish further reasons.

The Advocate/Applicant's argument that the Client/Respondent did not act sufficiently to obtain the reasons flies in the face of the record. Looking at paragraph 11(1) and 11(2) of the Advocates Remuneration Order the cumulative period given to the aggrieved party to object and to file the reference is 28 days. It will be noted that this Notice of Motion was filed on 17th July 2014 only about 14 days after the lapse of that period. Clearly the client/Respondent was not given sufficient time to exercise her rights under paragraph 11. Moreover by issuing the Certificate of Costs the taxing officer demonstrated his unwillingness to render the reasons for his decision yet his ruling is not reasoned at all in respect of the items objected to.

I would therefore decline to enter judgment as prayed and would instead set aside the Certificate of Costs issued on 11th June 2014 and remit the bill of costs for taxation before another taxing officer. Costs of the application be to the Client/Applicant. It is so ordered.

Signed, dated and delivered at Kisumu this 24th day of September 2015

E. N. MAINA

JUDGE

In presence of:

Mr. Ragot for Applicant

Miss Aron for Respondent

CC: Moses Okumu