



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI MILIMANI COMMERCIAL COURTS
MISC. CIVIL APPLICATION NO 178 OF 2014
IN THE MATTER OF THE ADVOCATES' ACT
AND
IN THE MATTER OF TAXATION OF COSTS
BETWEEN ADVOCATE AND CLIENT

D. NJOGU & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

CONTINENTAL CREDIT FINANCE (IN LIQUIDATION).....1ST RESPONDENT/ CLIENT

OFFICIAL RECEIVER & INTERIM LIQUIDATOR.....2ND RESPONDENT/CLIENT

RULING

INTRODUCTION

1. The Plaintiff's Notice of Motion application dated 8th October 2014 and filed on 16th October 2014 was brought pursuant to the provisions of Order 51 Rule 1 of the Civil Procedure Rules, Section 51 of the Advocate's (sic) Act Cap 16 Laws of Kenya and Rule 7 of the Advocates (Remuneration) Order. It sought the following orders:-

- 1. THAT judgment be entered for the applicant as against the respondent for the sum of Kshs 45,170,408/= only being the amount certified to be due by the Deputy Registrar of this court on 21st August 2014.**
- 2. THAT the respondent do pay to the applicant interest at the rate of 14% per annum from 30th September 2013 until payment in full.**
- 3. THAT the respondent do pay to the applicant the costs of the day.**

2. The application was supported by the Affidavit of David Njogu that was sworn on 8th October 2014. The application was served upon the Respondent as was evidenced by the Affidavit of Service sworn on 23rd October 2014 by Willis Odhiambo and filed on the same date. However, the Respondent did not

attend court when the said application came up for *inter partes* hearing on 27th October 2014.

3. The bottom line of the Applicant's case was that the Certificate of Taxation dated 21st August 2014 by the said Deputy Registrar had not been set aside, altered and/or varied by the Respondent and that in any event it did not have any pending application for the same before the court.

4. In the absence of any response from the Respondent, the Applicant's application was thus unopposed. Having considered the Applicant's affidavit evidence and bearing in mind that there was no pending application before the court indicating the Respondent's objection to the decision of the taxing master, the court hereby allows the said application in terms of Prayer No (1).

5. The court was not persuaded to award interest on the taxed amount at the rate of 14% per annum with effect from 30th September 2013 for two reasons. Firstly, the Applicant's fee note dated 20th August 2013 had only sought a sum of Kshs 17,052,000/=. There would be no legal basis for awarding interest on the entire sum of Kshs 45,170,408.00/= that was awarded by the taxing master on 21st August 2014, which sum had never been demanded from the Respondent.

6. Secondly, the Applicant did not demonstrate that it had raised its claim for the payment of interest at 14% as was provided in Rule 7 of the Advocates (Remuneration) Order.

DISPOSITION

7. For the aforesaid reasons, the court finds that the Plaintiff's Notice of Motion application dated 8th October 2014 and filed on 16th October 2014 was merited and the same is hereby allowed in terms of Prayer No (1) therein. Interest shall, however, be at court rates with effect from the date of 21st August 2014 until payment in full.

8. It is so ordered.

DATED and DELIVERED at NAIROBI this 31st day of October 2014

J. KAMAU

JUDGE