



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
MILIMANI LAW COURTS
MISC. CASE NO. 178 OF 2013

MURI MWANIKI & WAMITI ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

JOHN NGIGI NGANGA & RUTH MUTHONI NGIGI.....RESPONDENT/CLIENT

RULING

Interest and costs on advocate's bill

[1] The Applicant applied through a Notice of Motion dated 25th February, 2014 expressed to be brought under Section 51(2) of the Advocates Act, Cap 16 of the Laws of Kenya, Rule 7 of the Advocates Remuneration Order as well as Order 51 rule 1 of the Civil procedure Rules for:

- a) Judgment to be entered for the sum of Kshs. 127,302/- in costs as Certified by the Deputy Registrar on the 9th September, 2013.
- b) The said sum of Kshs.127,302/- be paid with interest at the rate of 14% per annum from 8th 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; and
- c) Costs of this application to be provided for.

[2] After considering the rival arguments herein, the points of contention are:

- a) Whether the Court should enter judgment in terms of the certificate of costs herein;
- b) Whether the advocate herein is entitled to interest on his bill of costs; and
- c) Whether the advocate is entitled to costs on his bill of costs.

Entry of judgment on certificate of costs

[3] I do not wish to re-invent the wheel on this issue. I am content to cite a work of the Court in **KAGWIMA KANG'ETHE & CO ADVOCATES v PENELOPE COMBOS & ANOTHER** that:

The issues herein are governed by the Advocates Act and revolve around section 51(2) in particular, for it is upon that section that the application before me is premised. Section 51 (2) of the Advocates Act of the Laws of Kenya provides as follows:-

“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, and the court may make such order in relation thereto as it thinks fit, including, in a case where a retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

*Section 51(2) of the Advocates Act and case law, indicate that the court may refuse to enter judgment on a Certificate of Costs: 1) Where there is a dispute on the retainer; or 2) Where it appears to the Court that issues have been raised that ought to be investigated and ventilated in a proper trial, even if there is no dispute as to retainer. See Waweru J in **MENYEE AND KIRIMA ADVOCATES v KENYA COMMERCIAL BANK**.*

[4] In this case, there is neither a dispute on the retainer nor issues which require interrogation in a trial. The taxed costs have in fact been paid over to the advocate. Therefore, this is a perfect case for judgment to be entered in terms of the amount in the Certificate of Costs. I should note, however, that payment of the costs does not prevent the court from entering judgment in this case especially because there are other outstanding issues on the costs to be determined by the court. The issues relate to interest on the taxed costs and costs on the application. These issues are premised upon a judgment being entered first. Accordingly, I enter judgment for the Applicant in the sum of Kshs. 127,320/=.

What about interest?

[5] This is one of the contested issues. The Applicant argued it is entitled to interest at 14% per annum from 8th May, 2013 until payment which is one month after delivery of the bill of costs to the client. The delivery letter has been annexed as “MN4”. The applicant relied on 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 he amount of the bill has been paid or tendered in full.”

[6] I have carefully considered the decisions in the cases of **Achola Jaoko & Company Advocates Vs Nelson Construction Services Ltd (2010) eKLR**, **Kagwimi Kang'ethe & CO. Advocates Vs Mits Electrical Co. Ltd & 2 others (2005) eKLR**, and **Kantai & Co. Advocates Vs Crest Hotel Limited Misc. Application No. 1373 of 2006**. 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. The reference point is delivery of the bill. Evidence of delivery is necessary. There are two inextricable conditions here; that the bill should have been delivered and not paid within one month thereof. That means that if the amount of the bill is paid before expiry of one month from its delivery, no interest shall be payable under the bill. To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the Certificate of Costs but the bill of costs. However, each case should be decided on its merits and circumstances. In the present case

delivery was done on 8th April, 2013. The amount of costs was not paid within a month from delivery of bill. Therefore, and I hereby order that interest will be charged on the sum of Kshs. 127,320 from expiration of one month from delivery of his bill to the client, i.e. from 8th May, 2013 until the time the costs were paid. 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.

And costs of the application?

[7] I must admit that the law, as I understand it is that an advocate appearing for self or his firm on a bill of costs is deemed to have engaged an advocate. He will ordinarily be entitled to costs of the application to enforce the Certificate of Costs under section 51 of the Advocates Act. The material cited to wit; **London Scottish Benefit Society v Chorley and others (1881-85) All ER Rep 1111**, that:

“In the report of the case in the LAW REPORTS in the court below the headnote goes a step further than the judgment. It is this; “where an action is brought against a solicitor who defends it in person and obtains judgment, he is entitled upon taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary.”

Again in Halsbury’s Laws of England, 3rd Edition at page 123 that:

“A solicitor who is a litigant and acting for himself or for whom his firm acts, is entitled to this necessary costs taxed in the ordinary way, but attendances to himself and like unnecessary items cannot be charged for

[8] Thus I hold the Applicant is entitled to costs necessary to the application herein. Ordinarily, however, costs for the taxation are dealt with by the taxing master during the taxation of the bill. It is so ordered.

Dated, signed and delivered in court at Nairobi this day of October, 2014

F. GIKONYO

JUDGE