



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC MISC. E085 OF 2021

P I SAMBA & COMPANY ADVOCATES.....APPLICANT

VERSUS

BUZEKI ENTERPRISES LIMITED..... RESPONDENT

RULING

(In respect of the Application dated 25th August 2021 for entry of Judgment after taxation of the Advocate-client bill of costs and issuance of a certificate of taxation).

Background.

1. The Application by the Advocate/Applicant is brought under the provisions of Section 51(2) of the Advocates Act & paragraph 7 of the Advocates Remuneration Order. The Advocate prays for entry of Judgment in terms of the certificate of taxation dated 20th August 2021. Further the advocate seeks interest on the taxed amount at the rate of 14% per annum from the date of service of the bill of costs until payment in full.

2. The Application is premised on the grounds on the face of it, more particularly, that:-

a) The bill of costs dated 28th April 2021 was served on 10th May 2021 together with a notice of taxation.

b) The taxing officer delivered a ruling on 12th August 2021 taxing the bill of costs at Kshs.3,238,117/- and a certificate of taxation dated 23rd August 2021 was issued thereafter.

3. The Application is further supported by the affidavit of Pennynah Samba sworn on 25th August 2021.

Client's Response.

4. The Application is opposed by the Client/Respondent by way of a replying affidavit sworn by Zedekiah Kiprop Bundotich sworn on the 21st February 2022. The Deponent is a director of the Client/Respondent Company.

5. The Client states that they entered into an advocate –client relationship with the Advocate/Applicant vide an oral retainer whereby the Advocate was to handle both contentious and non-contentious matters on behalf of the client and all its associate or elated companies at a fee of Kshs.150,000/= per month together with a separate invoice for transport disbursements. The said arrangement according to the Respondent was entered into in 2014.

6. The Client further alleges that since then, the Advocate has raised invoices each month which the client has duly honoured.

7. The Client therefore claims that the Advocate was not entitled to tax her bill of costs given that she had already been paid for services rendered as explained above.

8. The Client avers that it had raised a notice of preliminary objection dated 21st May 2021 before the Deputy Registrar. The said preliminary objection was however considered by the taxing officer and dismissed on the grounds that the retainer agreement was not produced and or substantiated.

9. The Client contests the dismissal of the preliminary objection on the basis that the retainer was in regard to non-contentious issues hence it needed not to have been put in writing in accordance with section 45 of the Advocates Acts.

10. The Client has attached copies of some invoices marked 'ZKB1' raised by the Advocate in support of its claim that it had a retainer arrangement with the Advocate.

11. The client is of the view that allowing the Advocate's application herein would amount to unjust enrichment on the part of the Advocate.

Rejoinder by the Advocate.

12. In her rejoinder by way of a further affidavit, the Advocate avers that the client did not file a reference against the ruling of the taxing officer. Further that the issue of the retainer agreement was dealt with in the ruling of the taxing officer dated 12th August 2021.

13. The Advocate denies the existence of an agreement for fees with the Client. The Advocate claims that she has been in pursuit of legal fees owed by the client in this and other matters.

14. While insisting that there was no agreement on fees payable, the Advocate avers that the monthly invoices raised were only for purposes of placing the law firm at the disposal of the client. The Advocate was however entitled to raise invoices for individual and specific matters from time to time. The advocate has attached samples of such invoices marked as 'PS1' in support of her argument.

15. The Advocate concludes by stating that what was between the Advocate and the Client was a retainer, and not an agreement on fees. The Advocate is of the view that the Client is deliberately misleading the court in a bid to defeat the ends of justice in this matter.

Court's Directions

16. The court's directions were that the application by the Advocate be canvassed by way of written submissions. Both parties complied. The court has had an opportunity to peruse the submissions of both parties.

Issues for Determination.

17. The court is clear in its mind that what is before it is an application for entry of Judgment after a taxation of an advocate - client bill of costs and issuance of a certificate of taxation; not a reference. Accordingly, the only issue for determination is whether the court should enter judgment in favour of the Advocate/Applicant as prayed with interest at 14% per annum from the date of service of the bill of costs until payment in full.

Determination.

18. I will go direct to the point. It is not in dispute that the Advocate bill of costs dated 28th April 2021, the subject matter of this application was taxed at Kshs.3,238,117/=. A certificate of costs was subsequently issued on 20th August 2021.

19. The taxation of the Advocate's bill of costs has not been challenged by the Client in accordance with the provisions of Rule 11 of the Advocates Remuneration Order.

20. Section 51(2) of the Advocates Act is clear and needs no expounding. The certificate of taxation of the taxing officer unless set aside or altered by the court **is final in regard to the amount of costs covered.**

21. The issues that the client now raises in the replying affidavit are issues that were before the taxing officer. If the client was dissatisfied with the ruling of the taxing officer, the law has provided the avenue and forum for determination of such issues. The client has not taken advantage of that appropriate forum.

22. Accordingly, the court finds that the certificate of taxation issued in this matter has not been challenged as provided for under the Advocates Remuneration Order. That being the case, the court has no option but to enter judgment in favour of P.I Samba & Company Advocates for the sum of Kshs.3,238,117/= as prayed.

23. On the aspect of interest, this court will be guided by the Court of Appeal decision in **Otieno Ragot & Co. Advocates vs Kenya Airports Authority (2021) eKLR**. The court stated that :-

“The rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursement and costs following submissions of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one (1) month from the date of delivery of the bill or fee note. The learned judge’s reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.”

24. The court went farther to consider the claim of interest after taxation of an Advocate – client bill of costs and held that:-

“Additionally, it is distinctive that a review of the applicant’s Bill of Costs does not disclose that the applicant included a charge for ‘...interest at 14% per annum on his (her) disbursements and costs...’ in the Bill of Costs. As the sole basis upon which

computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure (Act).

25. I have looked at the bill of costs that was drawn, filed and presented by the Advocate/Applicant in this matter. The Advocate did not include a charge of interest at 14% per annum which she now claims in her application. Guided by the above cited binding authority, Rule 7 cannot therefore apply in this case. I am only then left with the provisions of section 26 of the Civil Procedure Act.

26. Exercising this court's discretion under section 26 of the Civil Procedure Act, I will instead award the Advocate/Applicant interest at the rate of 14% per annum but from the date of service of the certificate of taxation upon the client as evidenced by the affidavit of service on record being the 21st August 2021 until payment in full.

27. Accordingly, judgment is entered in favour of the Advocate/Applicant for the sum of Kshs.3,238,117/- with interest at 14% per annum from the 21st August 2021 until payment in full.

28. The Advocate/Applicant shall also have the costs of this Application.

It is so ordered.

Dated, signed and delivered at Nairobi this 21st day of April 2022.

M.D MWANGI

JUDGE

In the Virtual Presence of:-

Ms. Samba for the Advocate/Applicant

Ms. Wangari for the Client/Respondent

Court Assistant: Hilda

M.D MWANGI

JUDGE