



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
MISC. CIVIL CASE NO. 358 OF 2008

KAIRU MBUTHIA & PARTNERS.....PLAINTIFFS

VERSUS

NARAN ARJAN *t/a* NEELCON CONSTRUCTION SERVICES.....DEFENDANT

RULING

This application is brought by a notice of motion dated 25th February, 2010, under **Section 51 (2)** of the **Advocates Act** and **Order L Rule 1** of the **Civil Procedure Rules**. The Advocate/Applicant seeks orders –

- 1. That judgment be entered for the Applicant against the Respondent for the sum of Kshs.668,501.70 being the sum certified to be due by the Deputy Registrar of this Court on 9th November, 2009.**
- 2. That the Applicant be awarded interest at 14% p.a. from 7th May, 2008 being the date of filing the bill of costs until payment in full pursuant to the Advocates (Remuneration) Order.**
- 3. That the costs of this application be awarded to the Applicant.**

The application is supported by the annexed affidavit of Kairu Mbuthia, Advocate, and is based on the grounds that the Applicant's Advocate – Client bill of costs was taxed on 30th June, 2009, at Kshs.668,501.70 and A certificate of taxation thereon issued by the Deputy Registrar on 9th November, 2009; that the certified costs have not been set aside or altered by this or any other Court; that there is no dispute with regard to the retainer; and that it is just and mete that this application be allowed.

The Court record shows that the Respondents herein were served with this application ten (10) days before the hearing date. That service notwithstanding, they did not file either a replying affidavit or grounds of opposition. Although they had sufficient time to appear in Court on the hearing date, they neither appeared nor were they represented. In the circumstances, the Court decided to proceed *ex parte*. Mr. Kiingati for the Applicant then submitted that the bill of costs taxed herein had not been set aside or altered and that the application was meritorious. He therefore asked the Court to grant the orders as prayed.

I am satisfied that the Applicant is entitled to judgment for the sum of Kshs.668,501.70 as stipulated in the certificate of taxation annexed to the application. I note, however, that the Applicant also seeks interest at 14% p.a. from 7th May, 2008 “... **being the date of filing the bill of costs until payment in**

full, pursuant to Advocates (Remuneration) Order.” However, **Rule 7** of the **Advocates (Remuneration) Order** states as follows –

“An Advocate may charge interest at 9 per cent per annum on his disbursements and costs ... from the expiration of one month 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.”

Since the certificate of costs was issued on 9th November, 2009, that was the earliest date on which the Applicant would have delivered his bill to the client and is therefore entitled to interest from 9th December, 2009.

In view of the foregoing, I make the following orders –

(a) Judgment be and is hereby entered for the Applicant against the Respondent for the sum of Kshs.668,501.70.

(b) The said sum to bear interest at Court rates from 9th December, 2009 until payment in full.

(c) The Respondents will also bear the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 29th day of July, 2010.

L. NJAGI

JUDGE