



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Miscellaneous Case 677 of 2009
ACHOLA JAOKO & CO. ADVOCATES PLAINTIFF

VERSUS
NEELCON CONSTRUCTION SERVICES LTD. DEFENDANT
RULING

The application before the Court is a notice of motion dated 15th March, 2010, and is made under **Section 51 (2)** of the **Advocates Act and Rule 7** of the **Advocates (Remuneration) Order**. The Applicants thereby seek orders –

- 1. That this honourable Court be pleased to enter judgment against the Respondent in the sum of Kshs.60,843/= together with interest thereon from the 20th day of November, 2009 until payment in full.**
 - 2. That this honourable Court be pleased to enter judgment against the Respondent for the sum of Kshs.4,020/= being further court fees assessed and paid on the certificate of taxation.**
 - 3. That the costs of this application be awarded to the Applicant.**
- The application is supported by the annexed affidavit of Caleb

Odhiambo Jaoko, Advocate, and is based on the ground that the certificate of taxation herein dated on the 9th day of March, 2010, pursuant to the taxation of the Advocates – Client bill of costs has neither been set aside nor altered, and that there has been no dispute as to the retainer.

When the application first came for hearing on 30th April, 2010, Mr. Jaoko appeared for the Applicant and Mr. Omwanza for the Respondent. Mr. Omwanza applied for an adjournment in order to enable the Respondent to file a replying affidavit. Mr. Jaoko opposed the application on the ground the Respondent had had sufficient time to file a replying affidavit and that the application was a ploy to delay the finalization of this matter. His protestation notwithstanding, the Court granted the adjournment with leave to the Respondent to file and serve a replying affidavit within 7 days. The Applicant was in turn granted leave to file and serve a supplementary affidavit within seven days of service if need be. In the presence of both parties, the Court then fixed the application for hearing on 28th May, 2010.

On the hearing date, Mr. Jaoko appeared for the Applicant but there was no attendance by or for the Respondent. Since the date was given in open Court in the presence of the respective Counsel for both parties, and in sufficient time for them to attend Court, the Court elected to proceed *ex parte*.

Quite apart from the non attendance by learned Counsel for the Respondent, the Court noted that the adjournment granted on 30th April, 2010, was meant and intended to allow the Respondents to file a replying affidavit within 7 days at their own request. By the time the application came back for hearing, they had filed neither a replying affidavit nor grounds of opposition. Coupled with their unexplained failure to attend Court, the Court was left in no doubt that the Respondent was not serious about challenging the application, and that the same was therefore unopposed. In consequence, the Court found that the Applicant was entitled to the orders sought.

I note that in addition to the sum of Kshs.60,843/= certified by the Deputy Registrar under the certificate of taxation, the Applicant claims interest thereon at 14% p.a. from the 20th November, 2009 until payment in full. However, **Rule 7** of the **Advocates (Remuneration) Order** provides that an Advocate may charge interest at 9% p.a. on his disbursements and costs from the expiration of one month from the delivery of his bill to the client. In the instant case, it is noteworthy that the certificate of taxation was issued on 9th March, 2010 and that was the earliest date on which the bill could have been delivered to the clients. The Plaintiff is therefore entitled to any interests with effect from one month after that date.

I accordingly enter judgment for the Applicant against the Respondents herein in the sum of Kshs.60,843/= with interest thereon at Court rates from 9th April, 2010 until payment in full. The Respondents will also pay the sum of Kshs.4,020/= being further Court fees assessed and paid in the certificate of taxation as well as the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 22nd day of July, 2010.

L. NJAGI

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