



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Misc 1373 of 2006

KANTAI & CO. ADVOCATES ..... PLAINTIFF

V E R S U S

CREST HOTEL LIMITED .....DEFENDANT

R U L I N G

By a Notice of Motion dated 23<sup>rd</sup> November, 2007 Sankale Ole Kantai T/a Kantai & Co. Advocates (*hereinafter referred to as the Advocate*) has moved this court under Section 51(1) and (2) of the Advocates Act and Order L Rule 1, 2 and 3 of the Civil Procedure Rules for Judgment to be entered in his favour as against Crest Hotel Limited (*hereinafter referred to as the Client*) for Kshs.240,151.72 being the taxed costs as per the Certificate of Taxation issued by the Deputy Registrar on 9<sup>th</sup> August, 2007.

The Advocate also seeks to be awarded interest from 6<sup>th</sup> November, 2006, at the rate of 9% per annum as provided under Rule 7 of the Advocates Remuneration (Amendment) Order.

The application is premised on the grounds that there is no dispute as to the Retainer, and that the advocate/client's Bill of costs has been taxed and a certificate of taxation issued by the Registrar and that the same has not been challenged.

In a supporting affidavit sworn by the Advocate on 23<sup>rd</sup> November, 2007, he reiterates that he was instructed by the Client's Managing Director, to act for the Client in a land transaction involving the purchase of a parcel of land. The Advocate explains that he provided the services and later filed a Bill of Costs for taxation after the client failed to settle his Bill. He annexed a Certificate of Taxation, showing that the Bill of Costs was taxed and the taxed costs duly certified. He admitted that the client had paid Kshs.150,000/= which he was ready to give credit for.

Mr. Kinyanjui who appeared for the advocate, submitted that although the client has since settled the taxed amount, the advocate was entitled to interest from 6<sup>th</sup> November, 2006, when the client was served with a fee note. He relied on the following cases:

(1) *Misc. Application No.209 of 2005, Wainaina Ileri & Co. Advocates versus Kenya Bus Services* where interest at the rate of 9% was awarded to the advocates from 3<sup>rd</sup> June, 2005.

(2) *Misc. Application No.867 of 2005, Kantai & Co. Advocates vs. Kenya Bus Services Ltd* where the court awarded interest at the rate of 9% per annum in accordance with rule 7 of the Advocates (Remuneration) Order.

The client was represented through the firm of Kariuki Runo & Co. Advocate who strenuously opposed the application, contending that the claim for interest is premature as interest accrue from the date of taxation. He maintained that interest cannot be charged for an amount which is indeterminate. Mr. Kariuki submitted that the interest should accrue from the date of taxation when the amount due was determined. He pointed out that the amount on the Bill of Costs presented for taxation was different from the amount certified as due.

Relying on Miscellaneous **No.867 of 2005, Kantai & Co. Advocate vs. Kenya Bus Services Ltd**, which was cited by the Advocate, Mr. Kariuki drew the court's attention to the fact that the interest of 9% per annum was ordered to be paid from 8<sup>th</sup> December, 2005 which was the date of taxation of the Bill of Costs. He therefore urged the court to award interest from 9<sup>th</sup> August, 2007. Regarding costs of the application, Mr. Kariuki urged the court to allow only disbursements as the Advocate was acting in person.

In reply, Mr. Kinyanjui sought to distinguish High Court Misc. Application No.867 of 2005, contending that interest was awarded from date of taxation as no fee note had been presented to the client before the taxation. My reading of that ruling does not however, concur with Mr. Kinyanjui's interpretation. It is indicated that the Advocate/Client's Bill of Costs was taxed by consent of the parties on the 8<sup>th</sup> December, 2005. That can only mean that a Bill of Costs was filed and served earlier before the parties appeared in court and taxed the same by consent.

Be that as it may, Rule 7 of the Advocates Remuneration (Amendment) Order states as follows:

***“An advocate may charge interest at 9 per cent per annum on his disbursements and costs, whether by scale or otherwise, 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.”***

In my understanding, if the client does not settle the advocates Bill within one month from the date of delivery of the Bill, he is liable to pay interest on the Bill, provided the claim for interest is raised before the Bill is paid in full. It has not been denied that the client paid the taxed costs in installments and did not finish paying the costs until after this application was filed.

The Advocate in the application has indicated that the Bill of Costs was submitted to the client for settlement on 6<sup>th</sup> November, 2006. This however, is not contained in the affidavit which is under oath. In any case, this is inconsistent with the annexures to the Bill of costs wherein it is indicated that a Bill of costs was forwarded to the client under hand delivery on the 29<sup>th</sup> November, 2006 and acknowledged by the client vide the letter dated 4<sup>th</sup> December, 2006.

In accordance with Rule 7 of the Remuneration (Amendment) Order, interest would be chargeable from 29<sup>th</sup> December, 2006.

The interest is chargeable on the taxed amount and not the amount billed.

Further, the advocate's prayer for costs is not justified as the advocate is appearing in person. I concur with Mr. Kinyanjui that the advocate is duly entitled to disbursements.

The upshot of the above, is that, I do award the advocate costs at the rate of 9% from 29<sup>th</sup> December, 2006, until the date of payment.

The advocate shall be entitled to disbursements in respect of this application.

Orders accordingly.

***Dated, signed and delivered this 29<sup>th</sup> Day of February, 2008.***

**H. M. OKWENGU**

**JUDGE**