



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc. Application 691 of 2001

FIDELIS M. NGULI T/A

NGULI & CO. ADVOCATESAPPLICANT

VERSUS

TANA AND ATHI RIVERS

DEVELOPMENT AUTHORITY.....RESPONDENT

RULING

1. The applicant's application, brought under section 51(2) of the Advocates Act and Order 50 Rule 1 of the Civil Procedure Rules seeks orders:-

1. ***THAT judgment be entered for the Applicant against the Respondent in the sum of Kenya Shillings One Million Six Hundred and Ninety Seven Thousand Eight Hundred and Seven only (Kshs.1,697,807.00) being the amount certified to be due by the Deputy Registrar of this court on 27th November 2007.***

2. ***THAT the applicant be accorded interest at 9% per cent per annum from 6th September 2006, until payment in full.***

3. ***THAT the costs of this application be awarded to the applicant.***

2. When the parties appeared before me on May 16, 2008, prayer number 1 of the application was allowed by consent. They then submitted only on prayer (2) of the application. Mr. Otieno appearing for M/s Nguli & Co. Advocates, the applicants herein submitted that the applicants were relying on Rule 7 of the Advocates Remuneration Order in urging the Court to grant them the prayer. The rule provides as follows:-

“7. 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.”

3. Mr. Otieno submitted further that in light of the above provision and for the fact that the taxed costs have neither been paid nor tendered in full, the advocate/applicant is entitled to interest at the rate of 9 per cent per annum with effect from 7/10/2006.

4. Miss Ndune for the respondent argued that the respondent only became aware of the bill after taxation on 27.11.02 and that interest should therefore be paid from that date only. She cited the persuasive authority in the case of **Mbigi Njuguna & Co. Advocates –vs- City Council of Nairobi (Misc. Civil Application No. 1313 of 2003)** in which the court held that the applicant ought to raise his claim for interest before the amount of the bill has been paid or tendered in full.
5. By a letter dated November 28, 2007, by which the applicants forwarded the Certificate of Taxation to the respondent's counsel, the applicants did not make mention of payment of interest. Miss Ndune therefore argued that the applicants should not now turn around and demand payment of this interest from 7/10/2006 because, according to her, there is no justification for the same.
6. After carefully considering the pleadings and the submissions, I do not find any justification for the applicants prayer for interest at 9% per annum from 7/10/2006. The fact alone that the Bill was served on 6/09/2006 does not confirm the fact that the applicant put forward its demand for payment of interest at the rate sought. Infact the applicant has not annexed any letter forwarding the Bill of Costs to the respondent for the costs of the respondent for the court to see what the contents thereof were.
7. In the result, I agree with Miss Ndune that any interest charged should be from the date of taxation. Accordingly, the applicants prayer for interest at the rate of 9% p.a with effect from 7/10/2006 fails but they are entitled to interest at the rate of 12% per cent per annum from 16/05/2008 until payment in full. The applicants shall also have the costs of the application.

It is so ordered.

Dated and delivered at Nairobi this 18th day of July 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-