



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Appli. 199 of 2007

MOHAMMED & KINYANJUI ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

**MUNICIPAL COUNCIL OF
THIKA.....RESPONDENT/CLIENT**

JUDGMENT OF THE COURT

1. The advocates/applicants filed their application by way of Notice of Motion on 30/10/2007. The application which is brought under Section 51(2) of the Advocates Act Cap 16 of the Laws of Kenya, paragraph 7 of the Advocates (Remuneration) Order and all other enabling provisions of the law seeks **ORDERS** –

(1) ***THAT this Honourable Court be pleased to enter judgment for the applicant as against the respondent for the sum of Kshs.160,929 together with interest thereon at the rate of 9% per annum from 27th August 2000 until payment in full.***

(2) ***THAT this Honourable Court be pleased to order that the respondent pays Value Added Tax (VAT) at the rate of 16% on the total fees due pursuant to a determination of prayer 1 above.***

(3) ***THAT costs of this application be borne by the respondent.***

2. The application rests on the (4) grounds on the face thereof:- (a) that the advocate-client bill has been taxed and allowed in the sum of Kshs.160,929 and a certificate of costs issued to that effect; (b) that the certificate of costs has neither been set aside nor altered by the court; (c) that the retainer in this case is not disputed; (d) that the respondent is truly and justly indebted to the plaintiff in the sum claimed and (e) that it is in the interest of justice that clients do pay advocates for services rendered.

3. The application is also supported by the sworn affidavit of **JAMILA MOHAMED** dated 26/10/2007 in which she says that the applicants herein were instructed by the respondents to represent them (respondents) in **HCCC No. 127 of 2000 – Maalim Rashid Irungu T/A P.D.S. Schools –vs- Town Clerk, Municipal Council of Thika & 3 Others**; that in the course of the suit, the respondents withdrew their instructions from the applicants and instructed another firm to appear; that consequently the applicants forwarded to the respondent the itemized Bill of Costs for settlement. This according to the deponent was done on 28/07/00; that through numerous other correspondence thereafter, the applicants reminded the respondents about the unsettled Bill which Bill the respondents eventually acknowledged receipt of vide their letter dated 11/08/2006; that by its said letter of 11/08/2006 the respondent requested the applicants to tabulate and justify their claim in accordance with the Advocates (Remuneration) Order, a request which the applicants complied with vide their letter dated 10/01/2007. Copies of these letters

were annexed to Jamila Mohammed's affidavit. The deponent says that despite all the correspondence the respondents have failed, refused and/or neglected to settle the bill thus prompting the applicants to file the Bill for taxing which bill was taxed and allowed in the sum of Kshs.160,929/= on the 31/07/2007. She also says that the Certificate of taxation still remains valid to date as the same has not been varied and/or set aside by an order of this Honourable Court.

4. In opposition to the application, the respondents filed Grounds of Opposition through the firm of Macharia Kahonge & Company Advocates. The respondents contend that –

(i) the application as drawn and filed is incompetent and/or bad in law as the prayers therein sought cannot be granted in the circumstances obtaining;

(ii) the interest and valued added tax (VAT) prayed for are not payable in the circumstances obtaining or at all.

5. At the hearing of the application Mr. Ngugi for the applicants submitted that the only thorny issue is that of interest. He relied on Rule 7 of the Advocates (Remuneration) Order which, provides –

“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.”

On the other hand, section 51(2) of the Advocates Act provides thus –

“51(2) the certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

6. Mr. Ngugi cited two authorities to support his arguments:-

(a) HCCC Misc. Application No. 60 of 2006 – Kamunori & Company Advocates –vs- Cannon Assurance (Kenya) Ltd. in which the court awarded interest at the rate of 9 per cent per annum from a date falling one month after the applicants had forwarded the bill to the client for settlement.

(b) Milimani HCC Misc. Application No. 680 of 2006 A.M. Kimani & Co. Advocates –vs- Kenindia Assurance Co. Ltd. In this case, the court also awarded interest at the rate of 9 per cent per annum from date that was more than one month from the time the applicant's bill was delivered to the respondent for payment.

7. Mr. Kahonge for the respondent thought otherwise; and submitted that any interest payable on the taxed amount can only be charged from the date of taxation and not from any earlier date. Mr. Kahonge relied on the following cases –

(i) Nairobi HCCC Misc. Application No. 867 of 2005 – Kantai & Co. Advocates vs Kenya Bus Services Ltd.

(ii) Nairobi HCCC Misc. Application No. 444 of 2004 – Musyoka & Wambua Advocates –vs- Rustam Hira Advocate

(iii) Nairobi HCCC Misc. Application No. 1458 of 2003 – Mbigi Njuguna & Co. –vs- Nairobi City Council,

and argued that in all the above cases, the court awarded interest only on certified costs from the date of taxation. He also contended that though the applicants may have tendered their bill to the respondents by

their letter dated 28/07/2000, the truth of the matter was that the payment tendered to the respondents on 28/07/2000 was much higher than the amount taxed and that for this reason, interest being asked for by the applicants should not be granted by this court. In his further submissions, Mr. Kahonge contended that the proper construction of section 51(2) of the Advocates Act is that interest is applied only on taxed costs and that only advocate who wishes to apply the 9% interest rate, should make the application at the time of taxation.

9. Mr. Ngugi responded by saying that there is no confusion and no contradiction between the provisions of section 51(2) of the Advocates Act and rule 7 of the Advocates ((Remuneration) Order. He said that rule 7 is made pursuant to section 44 of the Act. Section 44 empowers the Honourable the Chief Justice to make orders prescribing remuneration. In my view, I do not see where the conflict lies and Mr. Kahonge has not demonstrated to the court that there is such a conflict.

10. I have carefully considered the application as filed, the affidavit in support and annexures thereto, the grounds filed in opposition to the application and the submissions made to me including the authorities cited. It is clear from the above that the only issue for determination is the effective date of the 9 per cent interest that the applicant has asked for. The applicant did not say anything about the prayer for VAT. My assumption is that the prayer was abandoned. Even if my assumption is wrong, I am of the view that the applicant did not lay a basis for the same. For that reason, that prayer for VAT at 16% on the total fees due is disallowed.

11. Now coming back to the issue of the 9 per cent interest rule 7 of the Advocates (Remuneration) Order is quite clear on it. It says that an advocate who delivers his bill to the client before taxation is entitled to charge interest on such a bill effective from a date that is one month from the date of delivery of the bill. In the instant case, the bill to the respondent was delivered on 28/07/2000, so that as from 27/08/2000 the applicants became entitled to the 9% rate of interest. Mr. Kahonge attempted to shoot down the applicants quest for the interest on the ground that the amount demanded from the respondents on 28/07/2000 was much larger than the amount taxed by the taxing officer. In my view, the only condition laid down by Rule 7 of the Advocates (Remuneration) Order is that such a claim for interest is raised before the amount of the bill has been paid or tendered in full. In the instant case, the certified costs have not been paid by the respondents, whether in full or in part, nor is the retainer disputed this bringing the applicant's case within the ambit of section 51(2) of the Advocates Act.

12. In the circumstances, and by the powers conferred upon me by the provisions of section 51(2) of the Advocates Act, I do find and hold that the applicants are entitled to judgment in the sum of Kshs.160,929/= being taxed costs. I accordingly enter judgment for the said sum of Kshs.160,929/= plus interest thereon at the rate of 9 per cent per annum from 27/08/2000 until payment in full. The advocates/applicants shall also have the costs of this application.

13. Orders accordingly.

Dated and delivered at Nairobi this 8th day of October, 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Ngugi (present) for the Applicant/Advocate

Mr. Rogo holding brief for Kahonge for the Respondent/Client