



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

Misc Appli 578 of 2005

GACAU KARIUKI & CO. ADVOCATES.....PLAINTIFF/APPLICANT

versus

INVESCO ASSURANCE CO. LTD.....DEFENDANT/RESPONDENT

R U L I N G

On 19th October 2005, the taxing officer taxed the Advocate/Client Bill of Costs as between the applicant and the respondent herein.

It is notable that the said taxation was carried out by consent, and that the agreed costs were in the sum of KShs. 137,337/=.

Following the process of taxation, the taxing officer issued a certificate of taxation, by which she certified the costs so taxed.

When faced with the present application, in which the applicant is seeking judgement for the taxed costs, the respondent filed nothing in answer thereto. That implies that the application is unchallenged, and also that the contents of the affidavit in support thereof are uncontroverted.

I therefore find that the applicant, Gacau Kariuki & Co. Advocates, were duly instructed by the respondent, Ivesco Assurance Co. Ltd, to act on its behalf in **NAIROBI CMCC No. 1667 of 2004, DORCAS ASIBIKO & ANOTHER V BONIFACE IRUNGU**. In effect, there is no dispute as to retainer.

Therefore, as there has been absolutely no alteration, setting aside or variation of the certificate of taxation, I do hereby hold, that pursuant to the provisions of Section 51 (2) of the Advocates Act, the certificate of taxation is final as to the amount of the costs covered thereby.

The applicant has therefore met the statutory requirements of Section 51 (2), and is thus entitled to judgement for the sum in the certificate of taxation.

The applicant has also sought interest on the taxed costs at court rates from the date of taxation. However, when canvassing the application, the applicant did not make any attempt to justify the claim for interest.

In any event, pursuant to the provisions of Rule 7 of the Advocates (Remuneration) Order, an advocate may only charge interest at 9% per annum.

Insofar as the court rates are currently 14%, it follows that by asking the court to award it interest at that rate, the applicant was asking for a much higher rate of interest than that stipulated. In the circumstances, I decline to award interest at court rates.

The applicant also asked the court to direct that the interest on costs be calculable from the date of taxation. In view of that prayer, I deem it necessary to set out the provisions of Rule 7 of the Advocates (Remuneration) Order. It reads 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 effect the date from which interest becomes payable is a month after the advocate delivers his bill to his client.

In this case, the applicant has not specified the date when it delivered its bill to the respondent. However, as the Bill of Costs was taxed by consent, I find that the respondent may be deemed to have received the bill on the date of taxation, as it is on that date that they became aware of the costs that they should have paid to the applicant. Therefore, by analogy, interest would become payable from 20th November 2005, which is a month from the date of taxation.

Accordingly, there shall now be entered judgement for the applicant in the sum of KShs. 137,337/= together with interest thereon at 9% per annum from 20th November 2005, until payment in full. The applicant is also awarded the costs of the application dated 2nd November 2006.

Dated at Nairobi this 19th day of February 2007.

FRED A. OCHIENG

JUDGE