



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

Misc Civ Appli 1313 Of 2003

MBIGI NJUGUNA & CO. ADVOCATES .....APPLICANT

VERSUS

CITY COUNCIL OF NAIROBI .....RESPONDENT

R U L I N G

In the Notice of Motion dated the 3<sup>rd</sup> August 2004 and filed on the 20<sup>th</sup> September 2004, Mbigi Njuguna & Co., Advocates, the Applicant, seeks the following Orders, namely –

“1. That judgment be entered for the applicant as against the respondent for the sum of Kshs.2,841,344.00 being the certified costs due to the applicant”.

“2. **That the respondent do pay to the applicant interest on the certified costs at 9% per annum from date of taxation to the date of filing hereof and thereafter at court rate 12% until payment in full.**”

“3. **That the respondent do pay to the applicant the costs of this application.**”

The Application is premised upon the three grounds stated therein and supported by the affidavit of Dominic Njuguna Mbigi, learned counsel for the Applicant, made on the 3<sup>rd</sup> August 2004.

It is common cause that the Respondent owes the sum of Kshs.2,841,344/= to the Applicant being the certified costs following taxation of the Applicant’s Bill of Costs. However, and in opposing the granting of prayer No. 2 of the Application, the Respondent in the Replying Affidavit of Mary Ngechi Ng’ethe sworn on the 1<sup>st</sup> December 2004 states as follows in paragraphs 4 and 5 thereof –

“4. **THAT there is no justification for asking for interest at 9% on the certified cost from the date of filing hereof and Kshs.12% until payment in full.**”

“5. **THAT without prejudice to the foregoing, the Applicant’s taxed amount were advocate costs plus V.A.T. and disbursements but the Applicant can not under the Law earn interest on the V.A.T. which is a government tax and if anything, it should be deducted from the taxed sum if the Plaintiff is entitled to interest (which is denied).**”

I have considered the foregoing in light of the respective submissions of both learned counsel.

As to whether or not the Applicant is entitled to interest as prayed and though it is not in dispute that the Certificate of Taxation was duly rendered to the Respondent by letter dated the 20<sup>th</sup> July 2004, Rule 7 of the Advocates (Remuneration) Order requires an advocate to raise his claim for interest at 9 per cent as provided thereunder **“before the amount of the bill has been paid or tendered in full”** (emphasis added). In the Applicant’s said letter of the 20<sup>th</sup> July 2004, the Applicant ought to have raised his claim for interest and having failed to do so in that letter or in any other notice to the Respondent, the claim for interest at 9 per cent fails. The Applicant is, however, entitled to interest at 12 per cent from the date

hereof (being the date of judgment) until payment in full by virtue of the provision in Section 26 of the Civil Procedure Act.

On the aspect of Value Added Tax, the same became payable on the 20<sup>th</sup> August 2004 by virtue of Section 13(3) of the Value Added Tax Act and in default of payment, the Applicant is liable to pay interest thereon in accordance with the provisions of that Act. I find, therefore, that the Respondent's submission in this regard is misplaced and untenable particularly as the Respondent has not tendered payment of the certified costs which the Respondent has not disputed.

The result is that the Notice of Motion dated the 3<sup>rd</sup> August 2004 succeeds and is allowed in part and orders in terms of prayers 1 and 3 thereof be and are hereby granted.

Prayer No. 2 of the Motion is also granted in part but only to the extent that the Respondent shall pay to the Applicant interest on the judgment sum of Kshs.2,841,344/= at the rate of Twelve per centum (12%) per annum from the date hereof until payment in full.

It is so ordered.

Dated and delivered at Nairobi this 24 day of February 2006.

**P.Kihara Kariuki**

**Judge**