

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

Misc. Civ Appli. 104 of 2005

S.G. MBAABU & CO. ADVOCATES.....PLAINTIFF/APPLICANT

VERSUS

HON TOLA KOFA.....DEFENDANT/RESPONDENT

R U L I N G

The respondent client's advocate was served with the Notice of Motion dated 27th October 2005, but when the same came for hearing on 28th March 2006 there was no representation for the respondent nor was there any papers in opposition. The matter proceeded exparte.

The applicant's application is brought under the Advocate's Act and although stated to be under section 5 (2). I believe the correct section is section 51 (2). The quoting of the wrong section is not fatal to the application.

The applicant seeks judgment of kshs 169, 000/- being costs that were certified after taxation. The applicant also sought interest at the rate of 9% per annum.

It was argued in favour of the application that there was no dispute on retainer, that the costs had been taxed, and that it is fair and just in the circumstances that judgment be entered for the amount prayed.

The applicant's costs were indeed taxed at kshs 169, 000/- and a certificate of costs dated 6th October 2005 was issued. The plaintiff indeed deserves to have judgment for the stated amount. However in respect of interest the court finds that the applicant is not entitled to the same before judgment because of non compliance with paragraph 7 of The Advocates (Remuneration) Order. That paragraph provides:

“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 of the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

The applicant did not prove that it had raised the claim for interest from the respondent. That being so the applicant cannot get interest as claimed but will be awarded interest at court rate from the date of judgment.

The order of this court is:

- (1) That judgment is hereby entered in favour of the Advocate applicant for kshs 169, 000/-, with interest at court rate from the date of judgment hereof until payment in full.**
- (2) The applicant is granted costs of the Notice of Motion dated 27th October 2005.**

MARY KASANGO

JUDGE

Dated and delivered this 30th March 2006.

MARY KASANGO

JUDGE