

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Misc Appli 1048 of 2005

SANKALE OLE KANTAI T/A KANTAI & COMPANY ADVOCATESAPPLICANT

AND

KENYA BUS SERVICES LIMITED.....RESPONDENT

R U L I N G

The applicant is a firm of advocates. They have brought this application pursuant to the provisions of Section 51(1) and (2) of the Advocates Act, as read together with Order 50 rules 1, 2 and 3 of the Civil Procedure Rules.

Basically, the applicant is seeking summary judgement, pursuant to a Certificate of Taxation which was issued by the learned taxing officer on 24th March 2006. The applicant also asks that they be awarded interest on the taxed costs, at the rate of 9% per annum, from the date when the Bill of Costs was taxed.

From the affidavit of Mr. Sankale Ole Kantai, it is clear that the Bill of Costs was taxed by consent, on 16th March 2006. And from the Certificate of Taxation, which is annexed to Mr. Kantai's affidavit, it is clear that the applicant was awarded costs amounting to Kshs. 56,758/80.

The respondent has not disputed Mr. Kantai's deposition that they had instructed the applicant to act for them in NAIROBI CMCC No. 11752 of 2004.

Furthermore, the applicant did exhibit the Plaintiff and Defence in that case, from which it is clear that the applicant did prepare the Defence.

Those facts, coupled with the fact that the respondent participated in the taxation, and consented to the sum for which the bill of costs was taxed, satisfies me that there is no dispute as to retainer.

In the circumstances, I am satisfied that this is a fit and proper case to warrant the exercise of this court's discretion, pursuant to the provisions of Section 51(2) of the Advocates Act. Accordingly, I do hereby grant judgement in favour of the applicant, for KShs. 56,758/80.

As regards the applicant's prayer for interest, I note that the affidavit of service of James A. Abushila, which was sworn on 26th January 2006, states that the Bill of Costs was served upon the respondent on 19th January 2006. Even though the applicant may have served the respondent with a feenote prior to 19th January 2006, there is no evidence before me to prove it. Therefore, I am prepared to accept the date when the respondent was served with the Advocate/Client Bill of Costs, as the date when the applicant demanded payment for their fees.

In the circumstances, I order that the taxed costs shall attract interest at 9% per annum from 20th February 2006, which would be a date that is more than one month from the date when the bill was delivered to the client. This award of interest is made pursuant to the provisions of Rule 7 of The Advocates (Remuneration) Order.

Finally, the costs of the application dated 29th March 2006 are awarded to the applicant.

Dated Delivered at Nairobi this 20th day of June 2006.

FRED A. OCHIENG

JUDGE