



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

Misc Appli 484 of 2005

MUTUNGA & MUINDI ADVOCATESPLAINTIFF

VERSUS

M/S BUSSCAR LIMITEDDEFENDANT

RULING

This is an application by a firm of advocates who are seeking summary judgement against their erstwhile clients, pursuant to the certificate of taxation issued in this matter.

Before the application could start, the client indicated that it would raise a preliminary objection to the application. In response to that indication, the advocate pointed out to the court that the parties herein had recorded a consent order in another case, being **MISCELLANEOUS APPLICATION NO.204/05, MUTUNGA & MUHINDI ADVOCATES –VS- BUSCAR LIMITED.**

It was said that by the said consent order, the parties would be bound by the decision of the court, which was made in that case, insofar as the same was equally applicable to this case.

Although the client held the view that the consent order was not binding on the parties in this particular case, I verified from the original court file that the ruling on the preliminary objection in MISC. APPLICATION NO.204/05 (above-cited) was also binding on this case.

Accordingly, as the court had dismissed the client's objection in that other case, it was not available to the client to canvass an objection on exactly the same point.

Thereafter, the advocates invoked the provisions of Section 51(2) of the Advocates Act, and asked the court to grant them judgment for the sum specified in the certificate of taxation.

There being no challenge to the certificate of taxation herein, the same is deemed to be final as to the amount thereby certified. And therefore, in exercise of the authority conferred upon me by virtue of the provisions of Section 51(2) of the Advocates Act, I hereby grant judgement in favour of the applicant for KShs.188,775/=. I have been able to exercise my discretion in favour of the advocates because there was no dispute as to retainer.

The only dispute that was raised by the client was in relation to the claim for interest on the taxed costs. It was submitted that the advocates had failed to demonstrate the date when they presented their bill to the client.

The client also pointed out that the situation herein was comparable to that in which a plaintiff who fails to give a demand notice prior to filing suit, is not entitled to costs of the suit.

In response, the advocates submitted that they were entitled to claim interest on the taxed costs, from the date when the costs became payable.

The legal position, as I understand it, is that the issue of costs in a suit is governed by Section 27 of the Civil Procedure Act. Essentially, costs of and incidental to all suits are left to the discretion of the court or judge. It is upto the court or judge to determine by whom and out of what property and to what extent such costs are to be paid. However, as a general rule, costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

I have set out the foregoing understanding to dispel the client's notion that if a plaintiff did not issue a demand notice, he would not be awarded costs of the suit. If that were the position, it would have fettered the discretion of the court or judge, as provided for in Section 27 of the Civil Procedure Act. Also, such a position would imply that even though the plaintiff were successful in a case, costs would not necessarily follow the event.

To my mind that contention would be at variance with the express statutory provision, except where the court or judge had good reason to order otherwise.

But, it is also important for this court to emphasize that as regards the issues of determination on the quantum of costs, the same are governed by the Advocates (Remuneration) Order. In that regard therefore, recourse shall be had to that Order, as opposed to the Civil Procedure Act.

Rule 7 of the Advocates (Remuneration) Order stipulates that the taxed costs shall attract interest at the rate of 9% per annum, from a date that was one month from the date the bill was presented for payment.

In this case, the client has stated, correctly in my view, that the advocates failed to demonstrate the date when they presented their bill to the client, for payment. Does that omission disentitle the advocates from interest on the taxed costs?

I do not think so. First, because the entitlement to interest on costs is provided for in the rules. In effect, I do not think that the omission to prove the date of presenting the bill can take away that right. Secondly, I think that the said omission would only disentitle the advocates from claiming interest from the date when they may have otherwise been entitled to the same. But, in a case such as this one, in which the client participated in the process of taxation, they did become aware of the taxed costs on the date when the ruling thereon was given by the taxing officer. In those circumstances, I believe that it is only fair to order that the client pays interest at 9% per annum (pursuant to Rule 7 of the Remuneration Order) from a date that was 30 days after the ruling was delivered.

Accordingly, the taxed costs will attract interest from 8th August, 2005, until settlement in full.

The advocates are also awarded the costs of the application dated 15th August, 2005.

Finally, in accordance with the consent between the parties herein, this ruling shall apply in every respect, (except as to the quantum of the taxed costs), to **MISCELLANEOUS APPLICATION NO.485 OF 2005**. In other words, the judgement awarded in favour of the advocates in that case is for KShs.27,410/=, with interest at 9% per annum from 19th August, 2005.

A copy of this ruling is to be placed in that other case file, and shall constitute the decision therein.

Dated and Delivered at Nairobi this 7th day of June, 2006.

FRED A. OCHIENG

JUDGE