



REPUBLIC OF KENYA

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

Misc Appli 60 of 2006

KAMUNYORI & COMPANY ADVOCATES.....

APPLICANT

VERSUS

CANNON ASSURANCE (KENYA) LTD.....

RESPONDENT

RULING

The applicant has moved the court pursuant to the provisions of Section 51 (2) of the Advocates Act, as well as the provisions of Rule 7 of the Advocates (Remuneration) Order.

Principally, the applicant is asking the court to grant it judgement for the taxed costs.

When the application came up for hearing, on 2nd June 2006, the respondent failed to attend court, although there was proof that they had been duly served. The said respondent had also failed to file any document in opposition to the application. Therefore, as far as the facts set out in the supporting affidavit are concerned, I find that the same were uncontroverted.

In effect, there is no doubt about the fact that on 30th August 2002, the respondent did instruct the applicant to draw up a second Legal Charge in its favour over the property L.R. No. KWALE/DIANI BEACH BLOCK /63. The fact that the applicant was duly instructed can be verified not only from the deposition by Mr. John Kirk Nyaga Kamunyori, in his affidavit sworn on 28th April 2006, but also from the letter which the respondent wrote to the applicant, on 30th August 2002. The said letter was annexed to the affidavit of Mr. Kamunyori.

In the light of that finding, to the effect that the respondent did instruct the applicant herein, it is clear that there is no dispute as to retainer, as between the parties herein.

That finding is significant because one of the requirements pursuant to Section 51(2) of the Advocates Act is that the court may order that judgement be entered for the sum certified to be due, in a case where the retainer was not disputed.

The next question is as regards the basis of the sum in respect to which the applicant seeks judgement. In other words, is the sum derived from a process of taxation?

The applicant provided a ready answer to that inquiry, by making it abundantly clear that on 16th March 2006, the Advocate/Client bill of costs was taxed in the sum of KShs. 241,649/=.

Following the said process of taxation, a Certificate of Taxation was issued, on 22nd March 2006. The said certificate is for a sum of KShs. 241,649/=. And Mr. Kimunyori has said, in his affidavit in support of this application, that the Certificate of Taxation had not been set aside or varied. As the respondent has not challenged that statement, which is under oath, I accept it as accurately spelling out the factual position.

By virtue of the provisions of Section 51 (2) of the Advocates Act, the certificate of taxation is to be final as to the amount of the costs covered thereby, as it has been neither varied nor altered.

Accordingly, in the exercise of the authority conferred upon this court by the provisions of the statutory provision, I hereby grant judgement in favour of the applicant, for the sum of KShs. 241,649/=.

Meanwhile, as regards the claim for interest on the taxed costs, the applicant has demonstrated to the court that he did make a demand for payment, by a letter dated 23rd March 2006.

Rule 7 of the Advocates (Remuneration) Order stipulates that interest can be charged on the taxed costs, from a date that was a month after the bill was tendered to the client. Therefore, as the applicant herein wrote to the respondent on 23rd March 2006, asking for the settlement of the taxed costs, I hold that the said costs, amounting to KShs. 241,649/= shall attract interest at the rate of 9% per annum, with effect from 24th April 2006, until payment in full.

Finally, I award to the applicant the costs of the application dated 28th April 2006.

Dated and Delivered at Nairobi, this 24th day of July 2006.

FRED A. OCHIENG

JUDGE