



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL APPLICATION NO. 1458 OF 2003

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

VERSUS

NAIROBI CITY COUNCIL.....RESPONDENT

JUDGEMENT

The applicant's Notice of Motion dated and filed on 1st December, 2004 was brought under section 51(2) of the Advocates Act (Cap. 16) and rule 7 of the Advocates (Remuneration) Order.

The application carries two substantive prayers:

(i) that, judgement be entered for the applicant as against the respondent

for the sum of Kshs.23,853/00 being the certified costs due to the applicant;

(ii) that, the respondent do pay to the applicant interest on the certified costs at 9% per annum from 22nd July, 2004 being the date of taxation and the date of filing hereof; and thereafter at Court rate (12%) until payment in full.

The application is premised on the following grounds: (a) that, the advocate-client costs due to the applicant herein have been taxed at Kshs.23,853/00 and a certificate of taxation issued to that effect;

(b) that, there is no dispute that the respondent had retained the applicant herein as its advocates, in respect of which retainer advocate-client costs were duly taxed;

(c) that it is only fair and just, in the circumstances, that judgement be entered for the sum certified to be due to the applicant herein.

Evidence in support of the application is in the affidavit of **Dominic Njuguna Mbigi** dated and filed on 1st December, 2004. The content of the affidavit may be set out in summary as follows. The respondent has been the applicant's client for some 10 years. By a letter dated 22nd November, 1996 the respondent retained the applicant to act for it in defending the case, **Dr. Joel Geoffrey Momanyi & Another v. Nathan Kahara & Another**, HCCC No. 4162 of 1994. As the matter proceeded, the applicants requested the respondent to pay professional fees, but the respondent failed or neglected to do so. To recover the said fees, the applicants filed a bill of costs dated 25th November, 2003 which was taxed by the Deputy Registrar on 22nd July, 2004 and allowed in the sum of Kshs.23,853/=. By a letter dated 17th August, 2003 the applicants requested the respondent through their advocates to pay the applicants' costs; but there was no response. The respondent has not raised any objection, or preferred any appeal or reference from the ruling on taxation.

On the first occasion of hearing, on 14th February, 2005 the applicant was represented by **Mr. Mbigi**, while the defendant was represented by **Mr. Owang**. Hearing did not then take place; **Mr. Owang** sought adjournment, and leave to file papers in reply. He said his intention was to oppose the figures given on accrued interest on the taxed bill of costs. This application was opposed by **Mr. Mbigi** because the costs had already been taxed, and the respondent had filed no reference against the taxation; and the rate of interest was provided by law, so that there was not much to litigate about. I directed on that occasion that the hearing be adjourned; the respondent do file and serve his reply within three days; and the respondent do pay the day's costs and Court fees.

The respondent did file, on 15th February, 2005 a replying affidavit, though it had no appearance in Court at the next date of hearing, on 22nd February, 2005.

The replying affidavit of **Mary Ngechi Ngethe**, Deputy Town Clerk (Legal) of the respondent concedes that "it is true that costs were taxed at Kshs.23,853/="; but goes on to aver that "there is no justification for asking for interest at 9% on the certified cost from the date of filing hereof and 12% until payment in full." She further avers that: "the applicant's taxed amount were advocate costs plus VAT and disbursements but the applicant cannot under the law earn interest on the VAT 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)."

Learned counsel, **Mr. Mbigi**, stated that the applicant was seeking entry of judgement for costs already taxed by the taxing master. With the application were exhibited the certificate of taxation, and the formal request made for payment. This, by section 51(2) of the Advocates Act (Cap. 16), provided a basis upon which the Court could enter judgement requiring payment to be effected. By rule 7 of the Advocates (Remuneration) Orders, an Advocate may charge interest at the rate of 9% per annum following delivery of the bill of costs; and on this basis the applicant was praying for interest at the rate of 9%; and at the rate of 12% beginning from the date of judgement.

Mr. Mbigi submitted that there was no serious objection to the bill of costs. He was unable to see how VAT would be a relevant consideration in the burden falling on the respondent, since it was not referred to in the certificate of taxation.

The case made by the applicant is, in my view, quite clear and has no complications. It is common cause that the respondent owes money, in respect of professional fees, to the applicant; and I have not been able to discern any seriousness in the respondent's claim that interests were not payable as prayed by the applicants. I would also consider the issue being raised in respect of VAT, by the respondent, to be a red herring since it was not a factor in the taxation of costs, and it is not an element that appears to have imposed any burden upon the respondent.

In the result, I decide this application in favour of the applicant and against the respondent. I enter judgement for the applicant for the sum of Kshs.23,853/00. The respondent shall pay to the applicant interest on the certified costs at 9% per annum from 22nd July, 2004, and at 12% per annum from the date of this judgement until payment in full. The respondent shall pay the applicant's cost in respect of these proceedings.

Orders accordingly.

DATED and DELIVERED at Nairobi this 15th day of April, 2005.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court clerk: Mwangi

For the Applicant: Mr. Mbigi, instructed by M/s. Mbigi Njuguna & Co. Advocates

For the Respondent: Mr. Owang, instructed by M/s. C.W. Ngala & Co. Advocates.