



PUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
COMMERCIAL DIVISION, MILIMANI
Miscellaneous Application 183of 2005

KAGWIMI KANGE'THE & CO. ADV.....APPLICANT

VERSUS

MIT'S ELECTRICAL CO. LTD.1ST RESPONDENT

SATYA GANDHI2ND RESPONDENT

PRIEYA GANDHI3RD RESPONDENT

RULING

The application before the court is brought by way of a Notice of Motion dated 4th July, 2005, and expressed to be made under S. 51 (2) of the Advocates Act, Cap 16 of the Laws of Kenya; O. L rule 1 of the Civil Procedure Rules, and S. 3A of the Civil Procedure Act. It seeks from the court the following orders –

1. **THAT** judgment be entered against the respondents jointly and severally for the sum of Kshs.2,077,531.18 in terms of the certificate of costs dated 23rd May, 2005 together with interest thereon at 9% p.a. from 1st April, 2005 until payment in full.
2. **THAT** in the alternative, judgment be entered against the respondents jointly and severally for the sum of Kshs.1,752,531.18 being the balance due on the certificate of costs dated 23rd May, 2005 together with interest thereon at the rate of 9% per annum from 1st April, 2005 until payment in full.
3. **THAT** the costs of this application be borne by the respondents.

The application is supported by the annexed affidavit of GEORGE KANG'ETHE, Advocate, and is based on the grounds that–

- (a) The applicant's bill of costs dated 28th February, 2005 was taxed by the taxing officer on 15th April, 2005 and allowed in the sum of Kshs.2,077,531.18.
- (b) A certificate of costs for the said sum of Kshs.2,077,531.18 was issued by the taxing officer on 23rd May, 2005.
- (c) The said certificate of costs has not been set aside or altered by the court and is thereby final as to costs certified to be due to the applicant in this matter.

(d) Since taxation, the respondents have paid to the applicant a sum of Kshs.325,000/= only leaving an outstanding balance of Kshs.1,752,531.18 due and owing.

(e) Retainer is not disputed by the respondents.

(f) It will suit the interest of justice to enter judgment for the sum certified to be due and the balance of the certified sum together with interest and costs as prayed herein.

At the hearing of this application, Mr. Kangethe appeared for the applicant. The respondents did not attend. The court record shows that the respondents were served on 5th July, 2005. Being satisfied that the respondents were served in sufficient time to attend, the court proceeded ex parte.

Mr. Kang'ethe relied in his arguments on S. 51 of the Advocates Acts as well as his supporting affidavit. He contended that the applicant's bill of costs dated 28th February, 2005 was taxed on 15th April, 2005 and allowed in the sum of Kshs.2,077,531.18. A certificate of costs was subsequently issued on 23rd May, 2005 certifying that amount. That certificate has not been set aside or altered by the court. Under S. 51 (1) of the Advocates Act, that certificate is deemed to be final as to the amount due to the applicant. S. 51 (2) empowers the court to enter judgment where such a certificate is not altered or set aside and where the retainer is not disputed. He then submitted that the respondents have not disputed the retainer in this matter and therefore the applicant is entitled to judgment under S. 51. He further submitted that the applicant was entitled to judgment for the sum of Kshs.1,752,531.18 being the balance owing after the payment of Kshs.325,000/=. He also asked for interest at 9% per annum under Rule 7 of the Advocates Remuneration Order.

The court notes that although the respondents were duly served with the application, they filed neither a replying affidavit nor grounds of opposition. On the hearing date, they did not attend court. Section 51 (2) of the Advocates Act provides as follows –

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

In the instant case, the certificate of the taxing officer by whom the bill was taxed has not been set aside or altered by the court. Under provisions of S. 51 (2) of the Advocates Act, that certificate is therefore final as to the amount of costs covered thereby. As the retainer is not disputed, the applicant is entitled to judgment for the sum certified to be due. However, since the respondents have admittedly paid a sum of Kshs.325,00/= since the date of taxation, it is fair that judgment be entered for the outstanding balance, together with interest in terms of paragraph 7 of the Advocates (Remuneration) Order. This paragraph states –

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

The bill of costs in this matter was forwarded to the respondents under cover of a letter dated 28th February, 2005. One month expired at the end of March, 2005. The applicant is therefore entitled to interest from 1st April, 2005.

By reason of the foregoing, I find that the applicant has proved its case against the respondents. And since the application is unopposed, I make the following orders –

1. That judgment be and is hereby entered for the applicant against the respondents for the sum of kshs.1,752,531.18 being the balance of certified costs due to the applicant.
2. That the respondents do pay the applicant interest on the above sum of money at 9% per annum from 1st April, 2005 until payment in full.
3. That the respondents do pay the applicant the costs of this application.

Dated and delivered at Nairobi this 2nd day of August 2005.

L NJAGI

JUDGE