

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Misc Appli 222 of 2005

WAINAINA IRERI & CO. ADVOCATES.....APPLICANT

VERSUS

KENYA BUS SERVICES LIMITED DEFENDANT

JUDGEMENT

The applicant is a firm of advocates, Wainaina Ireri & Company Advocates. They have moved the court under the provisions of Section 51 (1) and (2) of the Advocates Act. Essentially, the applicant seeks an order that judgement be granted in its favour, in terms of the Certificate of Taxation. Section 51(2) of the Advocates Act stipulates 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 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 judgement be entered for the sum certified to be due with costs." In the light of that statutory provision, the applicant believes that it is entitled to judgement. In support of the application, the applicant filed an affidavit of Mr. David W. Ireri, advocate.

By the said affidavit, the applicant has satisfied me that the firm was duly instructed by American Life Insurance Company (Kenya) Ltd., by way of a letter dated 7th November 2001. The said insurance company was the insurer of the respondent herein, who was the defendant in CMCC NO. 9459 OF 2001, SOLOMON K. BUNYALI –VS- KENYA BUS SERVICES LIMITED. Through the letter of instructions, the applicant had demonstrated that it was duly instructed by the respondent. Accordingly, I do hold that there was no dispute as to the applicant's retainer.

However, I hasten to add that my finding on that issue is not guided solely by the fact that the applicant had made available to the court, a copy of the letter of instructions. The position is that Mr. David W. Ireri has deponed, in his affidavit, that his firm had been instructed to act for the respondent. That fact was not challenged by the respondent. Therefore, even if the applicant had not actually exhibited the letter of instructions, I would still have been persuaded that there was no dispute as to the retainer.

In other words, I hold the considered view that it is not mandatory for the advocate to exhibit the letter of instructions. However, in instances where instructions were in writing, it would certainly help the advocate's case if they did make it available to the court. Now, in this case, I have also perused the Certificate of Taxation, as well as the record of the proceedings before the learned taxing officer. I am satisfied that there was no alteration to the Certificate of Taxation. Also, there is no order setting aside the said certificate.

Accordingly, the said Certificate of Taxation, dated 1st August 2005 is final as to the costs cited in it, being Kshs.34,760/50. Therefore, in accordance with the provisions of Section 51(2) of the Advocates Act, I am satisfied that the applicant is entitled to judgement in the sum of Kshs.34,760.50/=; and I do therefore grant judgment accordingly. The applicant has also asked for interest at the rate of 9% per annum, in accordance with Rule 7 of the Advocates (Remuneration) Order. That rule provides as follows;

"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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full." In this

case, the applicant seeks for interest from 25th November 2002, when it tendered the fee note to the respondent.

I am afraid that interest is not payable from the date when the bill is tendered, but from a month thereafter. Accordingly, the applicant is awarded interest on the taxed costs, from 25th December 2002, until payment in full. Finally, the applicant is awarded costs of the application dated 11th August 2005.

Dated and Delivered at Nairobi this 18th day of November 2005.

FRED A. OCHIENG

JUDGE