



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 3 OF 2017**

**ODERA OBAR & CO ADVOCATES.....ADVOCATE**

**=VERSUS=**

**JET PROPERTIES AND APARTMENTS LIMITED.....CLIENT**

**RULING**

1. On 16/1/2017 the advocate brought a bill of costs against the client. The bill was served on the client on 24/1/2017. On 13/5/2020, the bill of costs was taxed at Kshs 269,466.12. Subsequent to that, the advocate brought a notice of motion dated 11/6/2020 seeking judgment in the following terms:

***1) That this honourable court be pleased to enter judgment in favour of Odera Obar & Co advocates against the respondent for the sum of Kshs 269,466.12 together with interest at the rate of 14 % per annum from 24th February 2017 until payment in full.***

***2) That the costs of this application be borne by the respondent.***

2. From the court record, the application was served on the client on 16/6/2020. There is common ground that subsequently, the client paid the taxed sum of Kshs 269,466.12 on 22/6/2020.

3. The said application is the subject of this ruling. However, because the taxed sum of Kshs 269,466.12 was paid on 22/6/2020, there is common ground that the single outstanding issue for determination in the said application relates to interest.

4. The issue was canvassed through written submissions. The case of the advocate is that he is entitled to interest at 14% per annum from 24/2/2017. He contends that he duly delivered to the client the bill of costs on 24/1/2017. He adds that interest became payable one month after delivery of the bill of costs. He relies on the affidavit of service filed on 26/1/2017. The client relies on the legal framework in paragraph 7 of the **Advocates (Remuneration) Order**. Further reliance is placed on the decisions in: (i) **Kethi & Co Advocates v Menengai Downs Limited, Misc Application No 1069 of 2013**; (ii) **Muri Mwaniki Advocates v John Ngige ; Misc Case No 178 of 2013**; (iii) **Nyaunde Tuiyott & Co Advocates v African Merchant Assurance Co Limited; Misc Civil Application No 78 of 2017**; (iv) **Odera Obar & Co Advocates v James Oudia Misc Civil Application No 163 of 2017**; and (v) **Waiganjo Wachira & Company Advocates v Pacis Insurance Company Limited Misc Application No 381 of 2017**.

5. The client's case is contained in its replying affidavit and written submissions. It contends that the bill of costs served on them was for the purpose of taxation and was not intended to prompt them to settle the amount therein. They add that the advocate has not demonstrated that he raised the issue of interest at the time of service hence he should not be awarded interest at 14% per annum but at court rates.

6. Citing the framework in paragraph 7 of the **Advocates (Remuneration) Order**, the client argues that, to establish a claim for interest, the advocate must notify a client by making appropriate demand. He adds that the bill referred to in paragraph 7 is not the bill filed in court but the bill presented to the client with the intention that the client pays the costs demanded therein.

7. Urging the court not to award interest as prayed in the application, the client relies on the decisions in: (i) **Otieno Ragot and Co Advocates v Kenindia Assurance Co Limited; Misc Cause No 78 of 2018**; (ii) **Otieno Ragot & Co Advocates v Kenya Airports Authority, Misc Civil Application No 95 of 2011**; and (iii) **D Njogu & Co Advocates v Kenya National Capital Corporation, Nairobi HC Misc Application No 21 of 2005**.

8. I have considered the rival submissions on the single issue relating to interest. The legal framework on the issue of interest payable on the advocate's costs is Paragraph 7 of the **Advocates (Remuneration) Order** which provides as follows:

***“ An advocate may charge interest at 14 percent 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 that such claim for interest is raised before***

*the amount of the bill shall have been paid or tendered in full”*

9. My interpretation of the above framework is that three key elements must be satisfied before a claim for interest on an advocate’s costs is awarded. First the advocate must demonstrate that he served the client with an itemized bill of costs. Secondly, he must demonstrate that a period of one month had lapsed from the day he served the client with his bill of costs to the day he raised the claim for interest. Thirdly, the advocate must demonstrate that as at the time of raising a claim for interest, the amount itemized in the bill had not been paid or tendered in full by the client.

10. It is not in dispute that the advocate drew an itemized bill dated 16/1/2017. The bill was served on the client on 24/1/2017. It is also not in dispute that, even after taxation of the bill on 13/5/2020, the client did not tender the amount. Consequently, the advocate brought the present application, seeking judgment for the taxed amount and interest thereon. The application was served on 16/6/2020. Service of the application is what prompted the client to pay the taxed amount on 22/6/2020.

11. From the above evidence, it is clear that the advocates duly satisfied the criteria set out under paragraph 7 of the **Advocates (Remuneration) Order**.

12. Counsel for the client submitted that there are more than one bill contemplated under the **Advocates (Remuneration) Order**. I do not agree with that interpretation because if the law contemplated a multiplicity of bills in relation to the same professional work, the drafters of the law would have expressly stated so.

13. My finding on the single issue in this application therefore is that, the advocate is entitled to interest at 14 % per annum on the sum of Kshs 267,466.12 from 24/2/2017 to 21/6/2020, inclusive of the two days. The advocate shall also have costs of this application. Consequently, judgment is accordingly entered in favour of the advocate in terms of this finding.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF JANUARY 2021.**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Ms Migiro for the Advocate/Applicant

Ms Odeyo for the Client

Court Clerk - June Nafula