

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
MISCELLANEOUS CIVIL SUIT NO. 69 OF 2002
IN THE MATTER OF G.S. OKOTH & COMPANY, THE ADVOCATES
AND
IN THE MATTER OF TAXATION OF ADVOCATES/CLIENT BILL OF COSTS

BETWEEN

G.S. OKOTH & CO. ADVOCATES THE ADVOCATES

AND

SOUTH NYANZA SUGAR CO. LTD. THE CLIENT

RULING:

The applicant, G.S. Okoth and Co. Advocates have brought this application under s. 51 of the Advocates Act as read with par.7 of A.R.O. and Order XI rule 1 CPR, seeking first for orders to consolidate this suit with civil suit No.70-100 of 2002. He then prays court to enter judgment in the suit and the consolidated suits in term of certificate of taxation. He then prays to be allowed to charge interest at rate of 9% on taxed costs from the date of expiry of 30 days from the date of serving the bills. He also prays for costs.

Apparently the advocate acted for the respondent in all the 30 or so cases tabulated. He later taxed his bills against the respondent in all those cases on various days. Certificate of costs were issued. The taxed costs were served on respondent on 15th April 2002 and as such interest should have started accruing on 15th May 2002 after expiry of 30 days. Some of the bills were paid later but others still remain unpaid. Applicant asked court to enter judgment in his favour and order that he be allowed to charge interest at 9% from 15/5/02 as per Rule 7 of Advocates Remuneration Order. He submitted that fact that some of the taxed costs were paid do not stop him from charging interest.

Application was opposed by Mr. Okongo for the Respondent. He submitted that there are no suits to consolidate. All the files were Miscellaneous Applications for taxation. Taxation was done and awards given. There is nothing, which remained to be consolidated.

Nothing is pending in the file and as such there should be no consolidation. Further it was stated that there was no other notice of motions filed in the other suits similar to this one. It was also said that the taxing master did not order for interest. The issue should have been raised before costs were paid.

I have considered the application. There is no dispute that the advocate acted for the Respondent in all the matters. It is also not in dispute that all the matters are similar and involve the same parties. I therefore allow the prayer to consolidate all the matters for purpose of this application and order so.

As for judgment there are certificate of costs annexed. S. 51(2) of the Advocates Act is very clear. Once certificate of costs is issued court can enter judgment. I therefore allow the 2nd prayer and enter judgment in all the files as per certificate of costs issued in each of those files.

The last issue is that of interest at rate of 9%. Indeed par.7 of the Advocate Remuneration Order provides that an advocate can charge interest on costs at rate of 9% starting 30 days after service. Service was done on 15/4/02. Interest should therefore have started on 15/5/04. However court was told that some of the bills have already been paid though I was not told which. I will therefore order that the applicant charge interest at rate of 9% from 15th May 2002 until payment in full for the bills, which were not paid by the time of filing this application. Those bills paid before then, no interest will be payable.

It is ordered as above.

KABURU BAUNI

AG. JUDGE

23/11/04

Mr. Oguttu for Mr. Okongo for Respondent.

KABURU BAUNI

AG. JUDGE