REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APPLICATION NO. 355 OF 2016

MASORE NYANG'AU & CO. ADVOCATES.....APPLICANT

=VERSUS=

KENSALT LTD.....1ST RESPONDENT

SUPPLIES & SERVICES LTD.....2ND RESPONDENT

RULING

1. This is the notice of motion dated 3rd February 2020 brought under section 51(2) of the Advocates Act, Cap. 16 Laws of Kenya, Rule 7 of the Advocates Remuneration Order and Section 3A of the Civil Procedure Act.

2. It seeks:-

> ***1. That the honourable court be pleased to enter judgment against the 1st and 2nd respondents in the sum of Kshs.1,069,484.86 as per the certificate of taxation issued on 11th September 2019.***
>
> ***2. That the honourable court be pleased to order that the taxed costs attract interest at the rate of 14th per annum from the date of the filing of the Bill of Costs being 23rd December 2016, until payment in full.***
>
> ***3. That the costs of this application be provided for.***

4. The grounds are on the face of the application and are set out in paragraphs (a) to (d).

5. The application is supported by the affidavit of Leo Masore, advocate/applicant sworn on the 3rd February 2020.

6. The application is opposed. There is a replying affidavit sworn by Mansukh Shantilal Patel, a director of the clients/respondents sworn on the 3rd December 2020.

7. The application was canvassed by oral submissions.

8. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit and the oral submissions on record. The issues for determination are:-

> ***(i) Whether the advocate is entitled to judgment under section 51(2) of the Advocates Act.***
>
> ***(ii) Is he entitled to interest at 14% p.a?***

9. It is not in dispute that the taxing officer has issued a certificate of costs dated 11th September 2019 from the sum of Kshs.1,069,484.86. I find that the Advocate's/Applicant's application has met the threshold for entry of judgment under section 51 (2) of the Advocates Act. I find that the advocate is also entitled to interest at 14% p.a upon expiry of one month from the date of delivery of the bill of costs.

10. I have gone through the replying affidavit of Mansukh Shantilal Patel, sworn on the 3rd December 2020.

In paragraph 4 he depones:-

> ***"That the certificate of taxation has neither been set aside nor stayed and it therefore represents the legal fees payable to the applicant by the respondents".***

I have gone through the entire replying affidavit and it appears the respondents do not oppose the current application.

11. It is the respondents' contention that they have paid Kshs.1,000,000 through one Lawi KIplagat. The said Lawi Kiplagat has not sworn an affidavit to confirm these averments. The respondents seek that this matter be referred back to the deputy registrar for accounts to be taken.

12. I find that this prayer is ill advised as this court has no jurisdiction to the taking of accounts at this stage. The issue of accounts ought to have been raised at the time of taxing of the bill of costs.

13. I agree with the advocate's submissions that it is too late in the day to order the taking of accounts between the parties.

14. The upshot of the matter is that I find merit in this application and the same is allowed namely:-

> ***(a) That judgment be and is hereby entered in favour of the advocate M/S Masore Nyang'au & Co. Advocates as against the clients/respondents in the sum of Kshs.1,069,484/86 as per the certificate of taxation issued on 11th September 2019.***
>
> ***(b) That interest be paid at 14% per annum from the date of filing, that is 23rd December 2016 until payment in full.***
>
> ***(c) That the advocate shall have costs of this application.***

It is so ordered.

Dated, signed and delivered in Nairobi on this 18th day of February 2021.

…….

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Masore Nyang'au for the Applicant

Mr. Masende for the Respondent

Phyllis – Court Assistant