



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC NO. E010 OF 2020

AKIDE & COMPANY ADVOCATESAPPLICANT

VERSUS

THE REGISTERED TRUSTEES OF THE KENYA RAILWAYS

STAFF RETIREMENT BENEFITS SCHEME.....RESPONDENT

RULING

1. The Application before Court is a Notice of Motion dated 17th September, 2021 by the Applicant brought under the provisions of **Section 51 of the Advocates Act**. The application seeks orders that the Certificate of Taxation dated 11th August 2021 be deemed as Judgment and Decree of this court and judgment be accordingly entered against the Respondent in the sum of **Kshs. 5,233,572.00** with interest at 14% per annum in accordance with Rule 7 of the Advocates Remuneration Order, one (1) month from the date of demand, until payment in full.

2. The Application is based on the grounds on the face of the same and the Supporting Affidavit of **Kenneth Wabwire Akide S.C** sworn on 17th September, 2021. The grounds advanced in support of the Application are that the Respondent instructed the Applicant to proceed with the change of user and obtain an individual title over L.R No. 209/1064/1/2/3/4 & 5 (amalgamation of title) which the Applicant did and further that Advocate bill of costs was taxed on 28th July 2021 and further the Respondent was informed of the determination of the suit and of intention of the Applicant to have the costs taxed. There is no pending Appeal or Reference and the applicant seeks to have judgment entered as prayed.

3. On **2nd February 2022** when the Application came up for hearing, Counsel for the Applicant submitted orally and urged the Court to allow the Application as prayed since the same had been served upon the Respondent and it was not opposed. The Court was also furnished with an Affidavit of Service sworn by **Jairus Nduru** on **5th January 2022** which confirmed that indeed the Respondent had been duly served and was aware of the scheduled Court's proceedings.

4. I have considered the oral submissions made by the Applicant's counsel, the Application and the Supporting Affidavit and the sole issue for consideration by this Court is whether the Application is merited. **Section 51 (2) of the Advocates Act** provides that,

“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.”

5. In this matter, I find that the Respondent was properly served with the Application and as such having not disputed the Certificate of Taxation dated 11th August 2021, this Court will therefore enter judgment against the Respondent for the said taxed costs of **Kshs. 5,233,572.00**

6. As to the interest, **Regulation 7 of the Advocates (Remuneration) Orders** provides that,

“7. An advocate may charge interest at 14 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.”

7. The wording of this regulation is clear that for an Advocate to charge interest, there must have lapsed a period of one month after the bill was delivered to the Client. The regulation is also specific that the claim for interest should have been raised. Regulation 7 provides that the bill must not only be served but a claim for interest should also be raised by the Applicant. I have perused annexure **KWA-5** which was a

demand for settlement of the taxed costs and other annexures on record and have noted that there is no evidence that such interest was ever demanded. In such a case, I am not able to make an award for interest.

8. On the issue of costs, courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the case but also the circumstances of each case. The Respondent did not resist the application and in the circumstances, I direct that each party to bear own costs of these proceedings.

9. Consequently, the application therefore stands allowed as follows:

i) Judgment be entered in favour of the Applicant against the Respondent for Ksh 5,233,572.00

ii) The claim for interest is declined.

iii) Each party to bear its own costs of the application.

10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF FEBRUARY 2022

E. K. WABWOTO

JUDGE

IN THE PRESENCE OF: -

PHILIP OMOITI FOR THE APPLICANT.

NA FOR THE RESPONDENT.

COURT ASSISTANT; CAROLINE NAFUNA.

E. K. WABWOTO

JUDGE