



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC MISC APPLICATION NO 6 OF 2020

AMONDI AND CO ADVOCATESADVOCATE/APPLICANT

VERSUS

COUNTY GOVERNMENT OF KISUMU..... CLIENT/RESPONDENT

R U L I N G

1. Costs in favour of the applicant were taxed and certified by the Deputy Registrar and a certificate of costs issued in the sum of Ksh.1,922,708.00. The costs were taxed on 8th July 2020.

2. The applicant filed the Notice of Motion application dated 11th August 2020 which is the subject of this ruling seeking the following orders: -

1. That the certificate of costs in respect of the taxation order made on July, 8th 2020 for the sum of Kenya shillings One Million Nine Hundred Twenty-Two Thousand Seven hundred and Eight shillings only (Kshs1,922,708.00) be adopted as judgment and decree of this Honorable Court together with interest at 14 % per annum from March 6th, 2020 until payment in full.

2. That interest accrued on the costs and disbursements due to the Applicant be awarded from the date of filing of bill for taxation on March 9th, 2020 till payment of the same in full by the Respondent.

3. That the costs of the application be borne by the client/respondent.

3. The application was supported on the grounds set out on the face of the application and on the annexed affidavit sworn in support of the same by Anthony Achura advocate. Inter alia the applicant averred he had been retained by the respondent to represent it in Nakuru petition No.9 of 2017 consolidated with Nakuru Petition no. 45 of 2016 and 44 of 2016 and that the applicant indeed executed the instructions of the Respondent by duly representing the respondent in the petitions. The applicant stated that their costs were taxed on July 8th, 2020 at Kshs.1,922,708.00 and a certificate of costs issued which has not been set aside and/or varied by the court. The applicant contends it is entitled to interest on the costs taxed from one month from the date of presentation of the Bill of costs to the respondent until payment in full. The applicant prays that the certificate of costs be converted to a judgment with an order for payment of interest on the same.

4. The Respondent filed grounds of opposition to the application dated 25th May 2021. The grounds are set out as hereunder: -

1. The application is a clear abuse of the court process intended to create a legal morass, elevate costs unnecessarily and waste precious judicial time, the applicant's application doesn't meet the threshold for the grant of the orders sought.

2. The application is incompetent, most frivolous and misconceived and ought to be dismissed with costs.

3. The application has in any event failed to meet the criteria for grant of the orders sought.

5. The applicant filed written submissions dated 10th June 2021. Although on 29th June 2021 when the matter was listed for mention before the court, the Respondent's counsel had intimated they had filed their submissions the same were not on the court record and none were availed as at the time of the preparation of this ruling. The court therefore has not had the advantage of considering any submissions by the Respondent.

6. The applicant's present application is predicated under Section 51 of the Advocates Act, Cap 16 Laws of Kenya. Section 51(2) of the

Advocates Act provides as follows: -

51 (2) The certificate of the taxing officer by whom any bills has been taxed shall, unless it is set aside or attired by the Court, be final as to the amount 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”.

7. Having regard to the above provision it is clear that the only instances where a court may not enter judgment on a certificate of costs is where the certificate has been set aside, varied and/or altered or the retainer is disputed. See **Republic -vs- City Council of Nairobi Ivyland Park Ltd (interested party) Exparte Inderpal Singh & 2 others (2021) eKLR** where P. Nyamweya J (as she then was) stated:-

“It is an established position of law that the only reason a court of law cannot enter judgment on a certificate of costs is if the same has been set aside or altered, or where there is an issue of retainer.

8. In the instant application the Respondent has not disputed the cost between it and the applicant which were taxed on 8th July 2020 at Kshs.1,922,708.00 and a certificate of costs issued. The court has not been notified of a pending reference and/or any objection to the taxation under Rule 11 of the Advocates Remuneration Order and in those circumstances I see no bar to entry of judgment in terms of the certificate of costs.

9. The singular issue would be whether the applicant would be entitled to interest as sought since the certificate of costs is silent on the issue of interest.

10. Rule 7 of the Advocates Remuneration Order provides when interest may be paid on costs as follows:-

7. An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise 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.

11. In the Bill of costs submitted to the client before taxation the Applicants had under items (1) and (2) of the bill of costs included a claim of interest which was a clear intimation that they expected to be paid interest on the costs. Before the Bill of costs was taxed, the Respondent did not have any basis to pay the costs and/or the interest as the bill was disputed. However, after the bill was taxed the Respondent became aware of the quantum of the costs. The Respondent was aware that the applicant expected that the costs would accrue interest unless the same were paid promptly. The cost were taxed on 8th July 2020 and the same ought to have been paid within 30 days if the respondent wished to avoid paying interest. The respondent ought to pay interest on the costs as from 8th August 2020 until the payment is made in full.

12. In the final result I allow the Notice of Motion dated 11th August 2020 and make the following orders:-

1. Judgment is entered for the Applicant against the Respondent for the taxed costs of Kshs.1,922,708.00 with interest at 14 % per annum from 8th August 2020 until payment in full.

2. I make no order for costs in regard to the Notice of Motion dated 11th August 2020.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF JULY 2021.

J M MUTUNGI

JUDGE