



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

MISC CIVIL CASE NO. 252 OF 2015

IN THE MATTE R OF: THE ADVOCATES ACT CAP 16 LAWS OF KENYA

IN THE MATTER OF: TAXATION OF COSTS BETWEEN CLIENT & ADVOCATE

- BETWEEN -

ODERA OBAR & CO.ADVCOATES.....APPLICANT

- VERSUS -

HELLEN ODIDO.....RESPONDENT

BEING THE COSTS ARISING OUT OF ARBITRATION

BETWEEN

HELLEN ODIDO.....CLAIMANT

- VERSUS -

ANNE MUTISO.....RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 11th September 2019 in which the Applicant seeks entry of judgment in the sum of Kshs.563,325.2 being taxed together with interest of 14% per annum from 2th November 2015 until payment in full. The Applicant contends that a certificate of taxation was issued by the taxing officer certifying that the advocate/client bill of costs had been taxed on 24th January 2017. The said certificate has not been varied and therefore judgment should be entered with interest at 14% per annum.

2. The Applicant’s application was opposed by the Respondent based on grounds of opposition dated 16th October 2020 on the ground that the application is incompetent and fatally defective as the amount on the certificate is less than the sum of Kshs614,525 /= which the Applicant admits having received from the Respondent and there is no outstanding amount which can attract interest at the rate of 14% per annum.

3. I have considered the Applicant’s application as well as the opposition to the same by the Respondent. During the hearing of this application, the counsel for the Respondent indicated that they were not opposed to entry of judgment but were only opposed to interest sought. The Respondent argued that a reading of Rule 7 of the Advocates Remuneration Order shows that the basis of interest f 14% is the amount in the bill and not on taxed costs.

4. The Respondent’s counsel argument does not seem to help. Whereas he seems to suggest that interest should have been based on the sum of Kshs.614,525/ which the Applicant admitted receiving he went on to argue that it is the Respondent who is owed a refund as the amount of taxed costs is less than what was admitted . In answer to this argument, the Applicant’s counsel argued that the admitted sum was taken into account during the taxation and that this is an issue which should have been raised before the taxing officer.

5. There is no doubt that a certificate of taxation has been issued. There was an attempt to set aside the taxed costs by the Applicant but this

attempt failed when this court dismissed the Applicant's reference on 7th November 2017. There have been different interpretations touching on order 7 of the Advocates Remuneration Order. Order 7 of the Advocates Remuneration provides as follows:

“ An advocate may charge interest at 14% per annum on his disbursements and costs, whether by sale or otherwise from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been aid or tendered in full”.

6. There is no evidence that the Applicant had delivered his bill to the Respondent. There is also no evidence that the Respondent had paid for or tendered the amount in full before the bill was delivered. This is why the Applicant moved to court and filed his bill for taxation. The bill was taxed at Kshs.563,325.28 . For purposes of Rule 7 of the Advocates Remuneration, order this is the time the Applicant's bill was delivered to the client. As per the said rule, interest of 13% per annum would start running 30 days after the date of taxation. It therefore follows that interest on taxed bills will start to run from 24th February 2017.

7. I therefore enter judgment for the Applicant in the sum of Kshs.563, 325.28 with interest at 14% per annum with effect from 24th February 2017 until payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 21ST DAY OF OCTOBER, 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Otieno for Ms Migiro for Applicant

Court Assistant: Mercy

E.O. OBAGA

JUDGE