



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC NO.E112 OF 2020

BRYAN KHAEMBA, KAMAU KAMAU & CO. ADVOCATES.....APPLICANTS

VERSUS

FATUMA ABDIKADIR EMAN.....RESPONDENT

RULING

(Notice of Motion dated 5th August 2021).

1. Before me is a Notice of Motion application by the law firm of Bryan Khaemba and Co. Advocates (hereinafter referred to as the Applicant) seeking that Judgement be entered against the Respondent for Kshs.300,208/= being the taxed and certified Advocate –client costs in Milimani CMCC E406/2020 . The Applicant also prays to be awarded interest on the taxed costs at 14% per annum from the 26th December 2020 and the costs of this Application.

2. The Application is premised on the grounds that :-

a) The Applicant filed an Advocate –client bill of costs dated 23rd November 2020.

b) The said bill of costs was taxed at Kshs.300,208/=.

c) A certificate of costs has already been issued dated 3rd May 2021 and served on the Respondent on 5th May 2021.

d) No reference has been filed to challenge the costs as taxed.

e) The Bill attracts interest at the rate of 14% per annum from the date of service of the bill upon the Respondent.

3. The Application is further supported by the Affidavit of Bryan Khaemba sworn on 5th August 2021. The Affidavit explains the sequence of events from the time of filing the bill of costs up to the taxation and issuance of a certificate of costs. The Applicant has attached a copy of the ruling by the Deputy Registrar dated 29th April 2021 and the certificate of taxation dated 3rd May 2021 certifying the taxed costs as Kshs.300,280/.

4. The Application is opposed by the Respondent by way of a replying affidavit of Fatuma Abdikadir Eman, the Respondent, sworn on 27th September 2021. The Respondent acknowledges that the Applicant represented her in the case CMCC E4062/2020 and another case CMCC E2433 of 2020. She alleges that she had already paid the Applicant substantial amounts of money as legal fees. Therefore, any further payments she alleges, would be an over-payment. The Respondent states that she has filed another case objecting to the action by the Applicant being ELC E338 of 2021. She has attached a copy of the Plaintiff in the said case.

Court's Directions

5. The court's direction in this matter was that parties file written submissions for consideration by the Court.

Submissions by parties.

6. The Applicant in his submissions quotes section 5(2) of the Advocates Act which 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”.

7. The Applicant submits that the Respondent has not filed any reference in this matter challenging the decision of the taxing officer. His position is that a certificate of taxation is final unless set aside or altered by the Court. He relies on the case of **Kenya Commercial bank Ls Vs Kinagop Reliance Co. Ltd & Another (2011) eKLR** which affirmed that a certificate of taxation is deemed final. It is the last and final step designating the amount of costs recoverable by the Advocate.

8. The Applicant further cited the case of **Lubulellah & Associates Advocates Vs N K Brothers Ltd (2014) eKLR**. In the said case, the court held that the law is clear that once a taxing master has taxed the costs, and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter Judgement.

9. On the issue of interest, the Applicant relied on paragraph 7 of part 1 of the Advocates Act which provides that interest shall be awarded at the rate of 14% from the 30th day upon which the Bill of costs was served upon the Respondent. The Applicant has attached to his supporting affidavit, an affidavit of service confirming service upon the Respondent on 26th November 2020. He therefore prays for interest at 14% per annum from the 26th December, 2020 (being the 30th day from the date of service of the bill upon the respondent) until payment in full.

10. The Respondent did not file any submissions despite an extension of a further 7 days given to her on 8th November 2021.

Determination

11. The issue for determination here is straight forward. It is whether the court should enter judgement in favour of the Applicant against the Respondent as prayed with interest at 14% per annum from the 26th December 2020 until payment in full.

12. I will go direct to the point without further ado. It is not in dispute that the Advocate - client bill of costs lodged by the Applicant was taxed at Kshs.300,208/- by the Deputy Registrar of the Environment and Land Court. After the taxation, a certificate of taxation was issued. The said taxation has not been challenged by the Respondent as provided for in the Advocates Act. I find no evidence of any reference challenging the certificate of taxation issued in this matter. What the Respondent calls a challenge is a civil suit No. ELC 338/2021 that has nothing to do with the certificate of taxation in this matter. The suit (ELC 338/2021) is against Khalid Adbikadir Mohammed, Mohamed Abdikadir & Rama Homes Ltd seeking cancellation of an eviction notice and the re-opening of some business premises.

13. Section 5(2) of the Advocates Act is clear and needs no further expounding. The Court finds that the certificate of taxation issued by the Deputy Registrar in favour of the Applicant against for the Respondent has not been challenged in any way. That being the case, the court enters judgement for the Applicant against the Respondent for the sum of Kshs.300,028/=.

14. On the aspect of interest, this court will be guided by the court of Appeal decision in **Otieno, Ragot & Company Advocates Vs Kenya Airports Authority (2021) eKLR**. The Court of Appeal while considering an appeal from the decision of the High Court held that:-

“As such, the rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a feenote. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the bill or feenote. The learned judge’s reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection”.

15. The court went further to consider the claim of interest after taxation of an Advocate -client bill of costs and held that:-

“Additionally, it is distinctive that a review of the applicant’s Bill of Costs does not disclose that the applicant included a charge for “interest at 14% per annum on his (her) disbursements and costs...” in the Bill of Costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure”.

16. In this case I have looked at the Bill of Costs that was drawn, filed and presented by the Applicant herein. The Applicant did not include a charge for interest at 14% per annum in the bill of costs. Accordingly guided by the above cited decision, the court declines to grant the Applicant interest from the 26th December 2020 as claimed in his application as a result of the omission to include the charge of interest at 14% per annum in the bill of costs.

17. Exercising this court’s discretion under Section 26 of the civil procedure Act, I will instead award the Applicant interest at the rate of 14% per annum from the 5th May 2021 (being the date when the Applicant served the Respondent with the certificate of taxation as confirmed by the affidavit of service annexed to the Application) until payment in full.

18. The Applicant shall also have the costs of the Application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF NOVEMBER 2021.

M.D. MWANGI

JUDGE

IN THE VIRTUAL PRESENCE OF:-

MR. BULOA HOLDING BRIEF FOR BRYAN KHAEMBA FOR THE APPLICANT/ADVOCATE

MR. ORIWA HOLDING BRIEF FOR MBOGO FOR THE RESPONDENT

COURT ASSISTANT: HILDA

M.D. MWANGI

JUDGE