



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISCELLANEOUS CIVIL CASE NO. E016 OF 2021

CORAM: R.E. ABURILL, J

DUKE O. OMWENGA T/A OMWENGA & COMPANY ADVOCATES.....APPLICANT

VERSUS

THE MONARCH INSURANCE CO. LTD.....RESPONDENT

RULING

1. By an application dated 26th November 2021, the applicant advocate Duke O. Omwenga t/a Omwenga & Co. Advocates seeks the following orders against the client - the Monarch Insurance Co. Ltd:

- 1) *That the court do enter judgment for a sum of Kshs. 115,579 as per the Certificate of Taxation issued on 10/11/2021 by the Deputy Registrar.*
- 2) *That the court do award interest at 14% per annum as from 10.11.2021 being the date when the Certificate of taxation was issued by the Taxing Master until payment in full.*
- 3) *That upon entry of judgment, the court do issue a decree for the sum of Kshs. 115,579 plus the accrued interest.*
- 4) *That the costs of this application and suit be awarded to the applicant.*

2. The application is predicated on the grounds on the face of the Notice of Motion brought under **Section 51(2) of the Advocates Act**, among other provisions of the **Civil Procedure Act and Rules**.

3. The Notice of Motion is further supported by the affidavit sworn by Duke O. Omwenga Advocate on 26/11/2021.

4. According to the applicant, he filed his Advocate/client bill of costs dated 21/5/2021 in respect of services rendered in **Bondo PMCC No. 7 of 2014 between Bonface Oriema Ochola v Mawere George O.** which bill was assessed on 2/11/2021 at Shs. **115,579** and a Certificate of Taxation was issued on 10/11/2021. However, that to date, the Respondent/client has not paid the said costs hence this application seeking for judgment and Decree for costs.

5. The application was served upon the Respondent as evidenced by the Affidavits of Service filed in court on 18/1/2022 and 10/2/2022 but the Respondent has not challenged the application and has not made any appearance. The latest service of Hearing Notice was done on 26/1/2022 as per the received date stamp on the Hearing Notice dated 25/1/2022, informing the Respondent that the application dated 26/11/2021 was due for hearing today 15/2/2022. Still no appearance was made.

6. I have considered the application, the grounds and the supporting affidavit as highlighted by Mr. Oribo advocate.

7. **Section 51(2) of the Advocates Act** mandates this court to enter judgment for costs recoverable. The section provides:

“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 thereby; and the court may make such order in relation thereto as it thinks fit, including where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

8. In the instance case, it is clear that Advocate/client costs were taxed and a Certificate of taxation issued on 10/11/2021. No Reference, has

been filed challenging the Certificate of Taxation. A Certificate of costs is therefore final as to the amounts of costs and the court is therefore under a duty to enter judgment in favour of the applicant against the Respondent for the taxed sum indicated in the Certificate of Taxation issued on 10/11/2021.

9. Therefore, as the Certificate of Taxation dated 10/11/2021 has not been challenged or set aside, I hereby enter judgment in favour of the Advocate/applicant against the Respondent/client in the sum of Kshs. **115,579** one hundred and fifteen thousand, five hundred and seventy-nine.

10. On interest, the applicant seeks for interest at 14% per annum from the date of taxation. **Rule 7 of the Advocates Remuneration Order** provides that:

“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.”

11. The applicant herein did not tender any evidence that he raised the issue of interest at 14% per annum in a bill served on the client within the stipulated period. According, I order that the amount decreed herein shall attract interest at court rates which is 12% per annum from 2/11/2021 the date of taxation until payment in full.

12. On costs of this application, I order that each party shall bear their own costs in order to avoid escalation of costs after costs and to bring the matter to closure.

13. Decree to issue forthwith to reflect this Ruling.

14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 15TH DAY OF FEBRUARY, 2022

R.E. ABURILI

JUDGE