



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC NO. E006 OF 2021

MULEKYO & CO. ADVOCATES.....APPLICANT

=VERSUS=

PETER MUTUA KINGO'OO (Sued on behalf of the

Estate of the late Francis King'oo).....RESPONDENT

RULING

1. This is a ruling in respect Notice of Motion dated 9th September, 2021 by the Applicant under the provisions of **section 51 (2) of the Advocates Act and Regulation 7 of the Advocates (Remuneration) Order**. The application seeks orders that judgment be entered against the Respondent for **Kshs. 2,513,398.542/-** being the taxed and certified costs, interest at Courts rate of 14% from 7th December 2020.

2. The Application is based on the grounds on the face of the same and the Supporting Affidavit of **ANTHONY M. MULEKYO** advocate sworn on 9th September, 2021. The grounds advanced in support of the Application are that the Advocate bill of costs was taxed on 27th July 2021 and that, the Respondent was informed of the determination of the suit and of intention of the Applicant to have the costs taxed. That there is no Appeal or Reference and the applicant seeks to have judgment entered as prayed.

3. Pursuant to the directions of this Court issued on 18th November 2021, the Court directed the Application be canvassed through written submissions. The parties were given timelines within which to file and exchange their respective submissions. The material on record shows that the Applicant filed their written submissions on 29th November 2021 while the Respondent's submissions were not on record by the time of preparation of this Ruling.

4. I have considered the written submissions, the Application and the Supporting Affidavit. **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 10th September 2021, this Court will therefore enter judgment against the Respondent for the said taxed costs of **Kshs. 2,513,398.542/=**.

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. The Applicant seeks interest from 7th December 2020. Regulation 7 provides that the bill must not only be served but a claim for interest should also be raised by the Applicant. There is no evidence that such interest was 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 2,513,398.542/=.

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 20TH DAY OF DECEMBER 2021

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. F. Muuo h/b for Mr. Mulekyo for the Applicant.

N/A for the Respondent.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO

JUDGE