

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT MISC. CASE NO. 310 OF 2019

WAIGANJO WACHIRA & CO. ADVOCATESAPPLICANT

VERSUS

TRIDENT INSURANCE CO. LTDRESPONDENT

RULING

1. The Notice of Motion dated 13/10/2020 seeks orders that:-

Judgment be entered for the taxed Advocate/Client costs of Kshs. 243, 872 contained in the Certificate of Taxation dated 8th October 2020 with interest thereon at the rate of 14% per annum with effect from 25th April 2018 until payment in full.

2. The Applicant's case as set out in the grounds stated in the application and the supporting affidavit is that the Advocate/Client Bill of costs was taxed on 8/5/2020 and a Certificate of Taxation issued for the sum of Kshs. 243, 872. It is further stated that the Respondent did not enter appearance during the said taxation.

3. The application is opposed. It is averred in the replying affidavit that the Applicant has failed to produce any letter of instruction by the Respondent nor produced any documents to enable the Respondent to respond to this application despite several numerous requests by the Respondent. It is further stated that the Applicant's claim is unmeritorious and ought to be dismissed with costs.

4. I have considered the application, the response to the same and the rival submissions filed.

5. 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.”

6. Paragraph no. 7 of the Advocates Remuneration Amendment Order stipulates that: -

“An advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.

7. The Certificate of Taxation herein has not been set aside or altered. No reference has been filed. The issues being raised by the Respondent in respect of documents in support of the claim are matters that ought to have been raised before the Taxing Officer during the taxation proceedings. That issue has already been overtaken by events.

8. The Applicant has sought interest at 14% from 25/4/2018 until payment in full. The service of the Bill of costs is not disputed.

9. With the foregoing, in the upshot I allow the application as prayed with costs.

Dated, signed and delivered at Nairobi this 17th day of June, 2021

B.THURANIRA JADEN

JUDGE