



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC MISC NO. 86 OF 2018**

**MURI MWANIKI & WAMITI ADVOCATES.....ADVOCATE/APPLICANT**

**=VERSUS=**

**WEDGE WOOD SUPPLIES (K) LIMITED.....CLIENT/RESPONDENT**

**RULING**

1. Before me is a Notice of Motion dated 9<sup>th</sup> March, 2021 by the Advocate/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. 192,523.2/-** being the taxed and certified costs, interest at Courts rate of 14% from 18<sup>th</sup> July, 2018 being one month from the date of delivery of the bill of costs to the client.

2. The Application is based on the grounds on the face of the same and the Supporting Affidavit of **Njuguna Muri** advocate sworn on 9<sup>th</sup> March, 2021. The grounds advanced in support of the Application are that the Advocate bill of costs was taxed on 20<sup>th</sup> November, 2018 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. The Respondent did not file any response but during the hearing of the Application, **Mr. Githui Advocate** appeared and made oral submissions on their behalf.

4. On 3<sup>rd</sup> December 2021, **Ms. Njuguna Advocate** made oral submissions for the Applicant while **Mr. Githui Advocate** submitted for the Respondent. The Respondent conceded prayer 1 of the Application and proceeded to submit against granting of prayers 2 and 3.

5. **Ms. Njuguna** submitted that the bill had not been settled to date and she urged the Court to grant interest and costs which according to her were statutory in nature having been provided for under paragraph 7 of the Advocates Remuneration Order. **Counsel Githui** while opposing the awarding of interest and costs referred to paragraph 7 which according to him is discretionary since it uses the word “may” doesn’t make it mandatory for the Court to award. It was also submitted that no demand for payment was ever made to the Respondent after the taxation of the bill and as such interest could not be awarded. On the issue of costs Counsel urged the Court to direct each party to meet their own costs of the Application since there was an advocate client relationship.

6. I have considered 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.”***

7. 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 20<sup>th</sup> November, 2018 and further having conceded to prayer 1 for the amount of **Kshs. 192,523.2/=**, this Court will therefore enter judgment against the Respondent for the said taxed costs of **Kshs. 192,523.2/=**.

8. 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.”***

9. 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 18<sup>th</sup> July, 2018. The Applicant stated that he had served the Respondent with the bill of costs on 28<sup>th</sup> May 2018. However, there was no evidence adduced to confirm if payment was ever demanded from the applicant to settle the taxed costs. Further, there is no indication as to whether the Applicant had raised the claim for interest with the Respondent. Regulation 7 provides that the bill must not only be served but a claim for interest should also be raised by the Applicant. In such a case, I am not able to make an award on interest and prayer (2) therefore fails.

10. 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 substantive prayer sought but rather conceded to the grant of the same on the day the application was set for hearing. There was also no cogent evidence from the Applicant whether payment had been made earlier after the certificate of taxed costs was obtained. In the circumstances, I direct that each party to bear own costs of these proceedings.

11. Consequently, the application therefore stands allowed only in terms of prayer (1) as was conceded by the Respondent.

12. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF DECEMBER 2021**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Ms.Njuguna for the Advocate.

Mr. Gichui for the Client.

Court Assistant; Caroline Nafuna.

**E. K. WABWOTO**

**JUDGE**