



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. E027 OF 2020

B McRONALD & ASSOCIATES ADVOCATES.....APPLICANT

VERSUS

FCC.....RESPONDENT

RULING

1. By an application dated 22.6.21, McRonald & Associates Advocates, the Applicant seeks that judgment be entered in its favour against FCC, **the Respondent** in the sum of Kshs. 391,674/= as per the Certificate of Taxation dated 13.5.21 together with interest at the rate of 16% per annum from 2.10.2020 being the 30th date from the date of service of the bill of costs upon the Respondent.

2. It is the Applicant's case that upon service of the Certificate of Taxation upon the Respondent he gave endless but empty promises of payment and even asked for the Applicant's bank details for the purpose of depositing the sum of 4,000 USD. The Applicant is apprehensive that the Respondent will not be able to settle the fees due unless compelled through execution proceedings.

3. The record shows that the Certificate of Costs was issued pursuant to the taxation of an Advocate/ Client bill of costs dated 28.8.2020 for services rendered in Children's Cause No. 1678 of 2019 – AJC v FCC.

4. The Application though served was not responded to. The law on taxation of bills of costs is contained in the Advocates Act and the Advocates Remuneration Order. Section 51(2) of the Advocates Act provides as follows:

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. The certificate of costs issued by the taxing officer in favour of the Applicant herein has neither been set aside nor altered by the Court. As per the foregoing provision, the certificate of costs is final as to the amount covered thereby. The provision empowers the Court to make such order as it thinks fit, including an order that judgment be entered for the sum certified to be due with costs.

6. Further, Paragraph 7 of the Advocates Remuneration Order allows an advocate to charge interest on his costs and disbursements as follows:

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 that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.

7. The rate of interest which an advocate may charge is set at 14% per annum. This interest is chargeable from the expiration of 1 month from delivery by the advocate of the bill to his client. There is a rider however. The claim for interest must be raised before the amount of the bill is paid in full.

8. In the present case, no evidence was placed before the Court to demonstrate that the Applicant made a claim for interest before the filing of the bill of costs or at all. In this regard, I concur with Kamau, J. who in the case of Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR, relied on by the Respondent, stated:

As this court held in the cases of HC Misc No 486 and 487 of 2012 E.W. Njeru & Co Advocates (Supra), if an advocate files his

Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. The court can only award the interest at court rates.

9. This position is further reinforced by the holding in Machira & Co. Advocates v Arthur K. Magugu & another [2019] eKLR, where the Court of Appeal had occasion to consider an advocate's entitlement to interest under paragraph 7 of the Advocates Remuneration and stated:

[24] The learned judge found correctly in our view that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per annum at least one(1) month before filing the Bill of Costs.

The appellant relied on a letter from counsel for the respondent to justify his position that the learned judge should have awarded him interest at 14% from the date of taxation. We note that the said letter refers to the decretal sum claimed while the issue of interest has not been addressed. The appellant did not produce a copy of his firm's letter of 9th August, 2001 referred to in the respondents' counsels letter of 20th September, 2001 to support his claim.

[25] Accordingly, we find that the learned judge did not err in finding that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per cent at least one (1) month before they filed their Bill of Costs. They were therefore not entitled to interest at 14%.

10. In the present case, there is no evidence that the Applicant claimed interest from the Respondent before filing the bill of costs. Accordingly, as guided by the Court of Appeal, the Applicant, though entitled to interest, may only have interest at Court rates and not at 14% per annum and certainly not at the rate sought of 16% per annum.

11. As regards the effective date of payment of the interest, the Applicant seeks to have the same charged from 2.10.2020, being 30 days from service of the bill of costs upon the Respondent. Paragraph 7 of the Advocates Remuneration Order provides that an advocate may charge interest from the expiration of one month from the delivery of his bill to the client. In Kithi & Company Advocates v Menengai Downs Limited [2015] eKLR, Mabeya, J stated:

In view of the foregoing, once a judgment is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For an Advocate to be able to recover this, there must be evidence on record on the date when the bill was served upon the client.

12. In the present case, although the Applicant claims to have served the bill of costs upon the Respondent on 2.10.2020, no evidence was availed to support this claim. Further, it is noted that the Certificate of Costs does not indicate the date when the said bill was taxed. The space where the date ought to have been indicated has been left blank. Additionally, the Applicant did not exhibit a copy of the ruling by the taxing officer. Without evidence of date of service of the bill of costs on the Respondent and noting that the Court has not been told of date of the taxation ruling, interest can only accrue from the date of the Certificate of Taxation.

13. In the end, this Court finds that the Application dated 22.6.21 partially succeeds. Judgment is hereby entered in favour of the Applicant as against the Respondent in the sum of Kshs. 391,674/= as per the Certificate of Taxation dated 13.5.21 together with interest at Court rates from 13.5.21. The Applicant shall have costs.

DATED, SIGNED AND DELIVERED IN MOMBASA THIS 17TH DAY OF SEPTEMBER 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **for the Respondent**

..... **Court Assistant**