



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

MISC. CIVIL APPLICATION NO. 328 OF 2018

WAIGANJO WACHIRA & CO. ADVOCATES.....APPLICANT

VERSUS

TRIDENT INSURANCE COMPANY LIMITED...RESPONDENT

RULING

1. For determination is the motion dated 14th October 2020 by **Waiganjo Wachira & Co. Advocates** (hereafter the Applicant) and expressed to be brought under the provisions of Section 51(2) of the Advocates Act, Paragraph 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules among others. The motion seeks that judgment be entered against **Trident Insurance Co. Ltd** (the Respondent) for the taxed Advocate/Client costs in the sum of Kshs. 84,205/= as contained in the certificate of taxation dated 13th October 2020 with interest thereon at the rate of 14% per annum with effect from 4th October, 2018 until payment in full. The motion is supported by the grounds on the face thereof and the affidavit of **James Ichaura Wachira**, an advocate practicing as such in the firm of **Waiganjo Wachira & Co. Advocates** who deposes that he is seized of the subject matter thus competent to swear.

2. The gist of the supporting affidavit is that the Applicant filed an Advocate-Client bill of costs that was taxed on 11th July, 2019, in the absence of the Respondent who despite service did not enter appearance or oppose the bill of costs; that subsequently, a certificate of taxation for the taxed sum of Kshs. 84,205/= issued on 13th October; and that it was imperative that judgment with interest be entered in terms of the certificate of taxation dated 13th October, 2020 to enable the Advocate-Applicant recover his due fees.

3. The motion was opposed by way of a replying affidavit sworn by **Eric Ntabo**, described as Legal Counsel in the Respondent. He views the motion as frivolous, unmeritorious and made in bad faith in addition to raising issues that properly belong to taxation proceedings, such as the retainer of the advocate and amounts in the bill of costs.

4. The motion was canvassed through written submissions. The Applicant, relying on **Nyabena Alfred t/a Nyabena Nyakundi & Company Advocates v Tourism Promotion Limited t/a Serena Hotel [2018] eKLR** and Section 51(2) of the Advocates Act argued that he was entitled to judgment as the certificate of taxation had not been set aside and or altered by way of reference. Further citing the case of **Muri Mwaniki & Wamiti Advocates v John Ngigi Ng'ang'a & Another [2014] eKLR**, among others and the provisions of Rule 7 of the Advocates Remuneration Order, counsel submitted that the bill of costs having been served upon the Respondent on 4th October, 2018, he was entitled to interest at 14% per annum from the said date.

5. On the part of the Respondent, submissions took cue from the replying affidavit and were centered on issues that properly belong to taxation proceedings. Thus, submissions were made on quantum in respect of various items of the bill of costs such as instruction fees.

6. The Court has considered the rival affidavit material and submissions made in respect of the motion. It is not in dispute that a certificate of taxation of costs has already issued in favour of the Applicant. No reference or other challenge to the certificate has been filed by the Respondent as provided under Rule 11 of the Advocates Remuneration Order. It is too late in the day for the Respondent to raise issues which they could have canvassed during the taxation but did not. Section 51(2) of the Advocate 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”.

7. The bill of costs was taxed *ex parte* and was therefore unopposed. The advocate is entitled to fees and or compensation for work done. He has availed himself of the provisions of Section 51(2) of the Advocates Act rather than filing a suit under Section 48 of the Act which provides inter alia that:

“(1) ...

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.

(3) Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed”

8. Proceedings brought under the provisions of section 51(2) of the Advocates Act and 51 Rule 1 of the Civil Procedure Rules enhance expediency in the resolution of claims arising from advocate-client taxed costs. In **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR Murgor JA**, cited with approval the decision in **Lubulellah & Associates Advocates V N.K. Brothers Limited [2014] eKLR** where the court held that:

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs.”

9. The Respondent’s opposition and submissions to the motion appear to fly in the face of the provisions of section 51(2) of the Advocates Act. The advocate is entitled to judgment and interest pursuant to Rule 7 of the Advocates Remuneration Order which 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 that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full”

10. The Court will therefore allow the motion dated 14th October 2020 with costs, save that interest on the taxed sums will be charged with effect from 4th November 2018 under the above Rule.

DELIVERED AND SIGNED ELECTRONICALLY ON THIS 7TH DAY OF OCTOBER 2021

C.MEOLI

JUDGE

In the presence of:

Mr Waiganjo Wachira for Applicant

Respondent: N/A

C/A: Carol