



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISC. APPLI. NO. 74 OF 2017

MAJUNE KRAIDO t/a KRAIDO & COMPANY ADVOCATES.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF KAKAMEGA.....RESPONDENT

RULING

1. The application for determination is dated 23rd July 2019. It seeks judgment for the taxed costs of Kshs. 1, 808, 508.00, with interest at 14% from 18th May 2014 till payment in full. It is argued that the retainer has not been disputed and that the certificate of costs had not been varied. The documents in support of the application indicate that the bill of costs was taxed on 22nd February 2018 in the sum indicated, and a certificate of taxation was accordingly given and issued on 27th February 2018. There are two letters exhibited, from the applicant, dated 18th April 2014 and 25th September 2018, to the respondent on the said matter of costs. .

2. The respondent has responded to the application, through an affidavit sworn on 10th September 2019, by the respondent's County Secretary, Moses L. Sande. He avers that the said certificate has been settled in full. He has attached payments vouchers dated 12th February 2019 and 17th April 2019, and bank slips, as evidence of settlement. The replying affidavit was not responded to, so I shall presume that the averments made therein, relating to payment of the taxed amount, are uncontroverted and are true.

3. The application was disposed of by way of written submissions. The applicant concedes the payment, but urges that judgement be entered as per the certificate, and claims interest on the amount in the certificate. The sum in the payment vouchers, the figures in the deposit slips are illegible, equal what is in the certificate of costs. The certificate of costs is dated 22nd February 2018. The payments were effected on 26th April 2019, when the money was deposited into the bank account of the applicant.

4. The sum in the certificate of costs has been settled in full. However, since the costs were not settled in full until a year later, the applicant would be entitled to costs, subject to Rule 7 of the Advocates Remuneration Order, which states as follows:

“An advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

5. It was said in *Kithi & Company Advocates vs. Menengai Downs Limited* [2015] eKLR, on interest on costs as follows:

“...An advocate is entitled to interest on the amount taxed on an Advocate/Client Bill of Costs. The rate awardable is 14% per Annum applicable from 30 days after the date of service of either the Block Fee Note or the Bill of Costs. This is clearly set out in Rule 7 of the Advocates Remuneration Order...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. In the instant case, the Advocate has claimed from the date of the taxation of the bill. If he succeeds to obtain his judgment, that would be the date when interest of 14%per annum will accrue.”

6. In *Jackson Omwenga & Co. Advocates vs. Everest Enterprises Ltd* [2017], the court said:

“I have perused the Advocates Remuneration (Amendment) Order, Rule 7. Under the said rule, 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.

To comply with that provision, the applicant must prove two things:

(a) That one month has expired from the time he delivered his bill to the client;

(b) He has raised his 'claim' for interest before the amount of the bill has been paid or tendered in full."

7. See also *Otieno Ragot & Co. Advocates vs. Keninidia Assurance Co. Ltd* [2020] eKLR.

8. According to the Motion dated 23rd July 2019, the applicant seeks interest from 18th May 2014. 18th April 2014 is the date on the letter that he wrote to the respondent forwarding a Fee Note in Block Form for settlement. On the face of the letter there is no evidence of when it was received by the respondent, if at all it was received. He also claimed interest through his letter dated 25th September 2018, again there is no evidence as to when the same was received, if at all, by the respondent. As there is no evidence that the letters in question were ever received by the respondent, I am not persuaded that I should award interest as claimed. I shall mark the application dated 23rd July 2019 as settled, effective from the date the respondent paid the amount in the certificate of costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 9TH DAY OF APRIL, 2020

W. MUSYOKA

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic, and in light of the directions issued by His Lordship, the Chief Justice, on 15th March 2020, this ruling/judgment has been delivered to the parties online with their consent. They have waived compliance with Order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159 (2) (d) of the Constitution which requires the court to eschew technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, which impose on this court the duty to use, inter alia, suitable technology to enhance the overriding objective, which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

W. MUSYOKA

JUDGE