



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION NO 681 OF 2017

WAIGANJO WACHIRA & CO ADVOCATES.....ADVOCATES

VERSUS

PACIS INSURANCE COMPANY LIMITED.....CLIENT

RULING

1. The Applicant's Notice of Motion application dated 20th August 2019 and filed on 22nd August 2019 sought entry of judgment for the taxed Advocate-Client Costs of Kshs 122,578/= contained in the Certificate of Taxation dated 9th August 2019 with interest thereon at the rate of fourteen (14%) per cent per annum with effect from 13th November 2017 until payment in full. It also prayed for costs to be awarded to it.
2. The said application was supported by the Affidavit of James Ichaura Wachira that was sworn on 20th August 2019. He stated that he was instructed by the Respondent herein to represent its insured in **Nairobi Civil Case No 5039 of 2015 Registered Trustee Loreto Convent Valley Road vs Joseph Mungai Ltd** and the firm of M/S S.O. Madialo & Co Advocates entered appearance for the opposing party.
3. He averred that on 13th November 2017, the Applicant filed an Advocate-Client Bill of Costs that was taxed at Kshs 122,578/= and a Certificate of Taxation was duly issued on 18th July 2019. It was his contention that it was in the interests of justice that judgment be entered as had been sought by the Applicant herein so that it could recover the full amount due to it.
4. On 6th November 2019, this court granted the Respondent herein an opportunity to file its response and Written submissions in respect of the present application. However, as at the time it reserved its Ruling, the Respondent had only filed Grounds of Opposition dated 15th December 2019. The same were filed on 19th December 2019.
5. The gist of its grounds of opposition was that the Bill of Costs was a nullity in law as it violated Order (sic)62A Rule 3 of the Advocates Remuneration Order and that interest ought to have been charged from the date of entry of judgment and not from the date of filing the aforesaid Bill of Costs for the reason that the taxed amount was an unliquidated sum which was not certain at the onset.
6. Paragraph 62(3) of the Advocates Remuneration Order provides as follows:-

“The bill shall be accompanied by a certificate setting out the dates during which all advocates acted, together with all agreements for remuneration made with them, all sums paid to them for costs and whether those sums were paid in full settlement.”
7. The Respondent did not elaborate its argument relating to the above cited provision of the law as it neither filed any affidavit evidence nor written submissions making it difficult for this court to follow and appreciate its argument. The court did not therefore analyse the said ground of opposition as it could not presume to know what the Respondent had wanted to submit on.
8. A perusal of the deponent's Affidavit and the grounds on the face of the present application showed that the Advocate-Client Bill of Costs was taxed and a Certificate of Costs issued as aforesaid. There was no dispute on retainer of the Applicant by the Respondent. There was also no evidence that the Respondent had filed a reference that was pending hearing and/ or determination and/or that the aforesaid Taxed Costs had been set aside and/or vacated.
9. As advocates do not offer any charity work to clients when they offer their legal services and must then be paid their dues, this court came to the firm conclusion that the Applicant had satisfied it that it was entitled to the said costs.

10. Having said so, the Respondent's arguments of when interest ought to have started accruing was pertinent. Notably, Paragraph 7 of the Advocates Remuneration Order stipulates 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.”

11. It was clear that interest ought to be charged upon expiration of one (1) after the delivery of the advocate's bill of costs as was held in the case of Muri Mwaniki & Wamiti Advocates vs John Ngigi Nganga & Another [2014] eKLR that the Applicant had relied upon.

12. This court took the position that if there was no proof of service of the said bill of costs, then interest ought to accrue from the date of entry of judgment as an advocate would still be entitled to interest despite failing to prove service of his advocate-client bill of costs. It therefore rejected the Respondent's submission that interest would only accrue after entry of judgment on the ground that the amount of the taxed costs was not clear until the bill of costs had been taxed for the reason that interest would only accrue on the taxed amount.

13. A copy of the Advocate- Client Bill of Costs that was attached to the Applicant's application showed that the same was served upon the Respondent on 7th December 2017. In line with Paragraph 7 of the Advocates Remuneration Order, interest therefore started accruing from 7th January 2018. It was not therefore correct as the Applicant had submitted that interest started accruing from 13th November 2017 because it had in fact admitted that the said Advocate-Client Bill of Costs was served upon the Respondent on 7th December 2017.

DISPOSITION

14. Accordingly, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 20th August 2019 and filed on 22nd August 2019 was merited and accordingly, it is hereby directed that judgment be and is hereby entered in favour of the Applicant herein against the Respondent herein for the taxed Advocate-Clients costs in the sum of Kshs 122,578/= together with interest thereon at the rate of fourteen (14%) per cent from 7th January 2018 until payment in full.

15. It is so ordered.

DATED and DELIVERED at NAIROBI this 7th day of May 2020

J. KAMAU

JUDGE