



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPLICATION NO. 725 OF 2017

WAIGANJO WACHIRA & COMPANY ADVOCATES..APPLICANT

VERSUS

PACIS INSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. The firm of Waiganjo Wachira & Co. Advocates, the applicant herein took out the motion dated 20th August 2019, in which it sought for inter alia:

a) THAT judgement be entered for the taxed advocate/client costs of kshs.106,904/= contained in the Certificate of Taxation dated 9th August 2019 with interest thereon at the rate of 14% per annum with effect from 4th December 2017 until payment in full.

b) THAT costs of the application herein be awarded to the advocate/applicant.

2. The motion is supported by the affidavit of James Ichaura Wachira. When served, Pacis Insurance Co. Ltd, the respondent herein, filed grounds of opposition to resist the application. This court directed the parties to file and exchange written submissions. However, at the time of writing this ruling the applicant was the only party which had filed its submissions.

3. I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. I have also considered the grounds of opposition together with the applicant's written submissions.

4. It is the submission of the applicant that it was issued with a certificate of taxation in **Nairobi C.M.C.C no. 7828 of 2014, William Watanga Omolo =vs= Fredrick Otieno Obonyo** on 9th August 2019 for a sum of ksh.106,904/=. The applicant further pointed out that the aforesaid certificate of costs has not been challenged therefore judgment should be entered in the applicant's favour.

5. The respondent filed grounds of opposition, arguing that the Bill of Costs dated 27th November 2017 is a nullity in law as it violates the provisions of Order 62A rule 3 of the Advocates Remuneration Order.

6. The respondent further stated that interest should be charged from the date of entry of judgment on taxed amount and from not the date of filing the Bill of Costs as sought in the instant application since the taxed amount was an unliquidated sum which was not certain at the onset.

7. In response, the applicant stated that the respondent's notion that the Bill of Costs violates the provisions of **Order 62A rule 3** of the Advocates Remuneration Order is misconceived as the aforesaid provision relates to a Bill of Costs where there is a change of advocates which is not the case here. The applicant also argued that it is entitled to interest at the rate of 14% p.a from the date of filing the Bill of Costs.

8. Having considered the rival arguments, it is apparent that the parties to this application do not dispute the fact that the applicant herein appeared for the respondent's insured who was the defendant in Nairobi C.M.C.C. No. 7828 of 2014.

9. It is also not in dispute that the Advocates-client Bill of Cost was taxed and there is no reference filed to challenge the same under the provisions of the Advocates Remuneration Order.

10. I have already stated the grounds which the respondent raised to oppose the applicant's motion. First, it is said that the Bill of Costs violates the provisions of **Order 62A rule 3** of the **Advocates Remuneration Order**. With respect, I agree with the applicant's argument that the aforesaid provisions relates to a Bill of Costs where there is a change of advocates which is not the case in this matter.

11. It is apparent that the respondent has not taken any steps to challenge the award on taxation. Even if the first ground of objection was valid, the same can only be raised and argued in a reference as envisaged under paragraph 11 of the Advocates Remuneration Order. The decision on taxation therefore remains unchallenged.

12. The provision of Section 51(2) of the Advocates Act provides *inter alia*:

“The certificate of taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered by 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.”

13. It is clear that the certificate of taxation issued on 9th August 2019 has not been set aside nor altered.

14. In the circumstances, the applicant is entitled to judgment as per the certificate of taxation.

15. The second ground of opposition which was raised by the respondent is the question as to the date as to when the taxed amount should attract interest. The respondent is of the submission that the amount taxed should attract interest from the date of taxation and not from the date of filing. The applicant has beseeched this court to award it interest with effect from 4th December 2017, the date of filing the Bill of Costs.

16. I think the law appear to be clear as to when the amount of the Bill should attract interest. Paragraph 7 of the **Advocates (Remuneration) Order provides as follows:**

“An advocate may charge interest at 14% p.a on his disbursements and costs whether the scale or otherwise from the expiry of one month from the date of delivery of the bill to the client, providing, such a claim for interest is raised before the amount of the bill has been paid or tendered in full.”

17. It is therefore clear that the applicant is entitled to charge interest on the taxed amount 30 days from the date of service. I have perused the affidavit of service of Richard Wachira Sworn on 26th January 2018 and it is clear that the Bill of Costs dated 29.11.2017 and the Taxation Notice dated 11th December 2017 were served upon the respondent on 26th January 2018. The law requires that if the Bill is not settled within 30 days from the date of service, the amount claimed should interest at 14% p.a.

18. I am satisfied that the taxed costs should attract interest at 14%p.a from 27th February 2018.

19. In the end, the applicant’s motion is found to be meritorious.

Consequently, judgment is entered in favour of the applicant in the sum of ksh.106,904/= plus interest at 14% per annum with effect from 27th February 2018 until the date of full payment. The applicant is awarded costs of the motion.

Dated, Signed and Delivered virtually via Microsoft Teams at Nairobi this 3rd day of July, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent