



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPLICATION NO. 65 OF 2015

OTIENO RAGOT & CO. ADVOCATES.....APPLICANT

-VERSUS-

NATIONAL BANK OF KENYA LTD.....CLIENT/ RESPONDENT

RULING

The application dated 29th February 2020 was brought pursuant to **Section 51** of the **Advocates Act**.

1. The Applicants, **OTIENO RAGOT & COMPANY ADVOCATES** (hereinafter, “*the Advocates*”), have asked the Court to grant judgment in their favour, in terms of the Certificate of Costs dated 21st February 2020.

2. By the said Certificate of Costs, the Advocates were awarded costs in the sum of Kshs 826,907.87.

3. It is the Applicant’s case that they are entitled to Judgment for the said taxed costs, together with interest at the rate of 14% per annum from 11th June 2015, until payment in full.

4. The Advocates also asked the court to order the Respondent, **NATIONAL BANK OF KENYA LIMITED** (hereinafter “*the Bank*”), to pay the costs of this application.

5. On the face of the application the Applicants cited the following as the ground upon which their prayer for interest was anchored;

“c) The Applicant made a demand for fees before instituting these proceedings and served the same upon the Client on 12th May 2015.

The Client did not honour the demand and the Applicant is therefore entitled to interest at 14% p.a from the expiry of one month from the date of delivery of the bill in accordance with Paragraph 7 of the Advocates Remuneration Order.”

6. It is evident that on 12th May 2015, the Client received a Demand Notice from the Advocates, requiring them to pay fees and disbursements amounting to Kshs 1,964,318.90.

7. It is common ground that on 19th November 2015 the learned Taxing Officer taxed the Advocate/Client Bill of Costs in the sum of Kshs 711,717.87.

8. Both the Advocates and the Bank were dissatisfied with the Ruling of the Taxing Officer, prompting them to lodge separate References to challenge it.

9. On 17th August 2016 Majanja J. delivered a Ruling on the 2 references. The learned Judge dismissed the Bank’s Reference, whilst allowing the Advocates reference. In the result, the Advocates’ fees was enhanced from Kshs 711,717.87, to Kshs 826,907.87.

10. But the Bank was not satisfied with the said decision, and decided to file an application for review of the same.

11. On 6th March 2017 Majanja J. delivered his Ruling, by which he set aside the Ruling dated 17th August 2016. The learned Judge ordered that the 2 references be heard afresh.

12. The Ruling dated 6th March 2017 elicited an appeal to the Court of Appeal, being **OTIENO RAGOT & COMPANY ADVOCATES Vs NATIONAL BANK OF KENYA LIMITED, CIVIL APPEAL NO.60 & 62 OF 2017.**

13. On 31st January 2020 the Court of Appeal delivered its judgment, in which they set aside the decision that had been rendered on 6th March 2017. In effect, the Court of Appeal reinstated the decision made on 17th August 2016.

14. In my considered view, the Advocates are correct when they submitted thus;

“In a judgment dated the 31st January 2020 the Court of Appeal overturned the ruling dated 6th March 2017, meaning that the ruling and orders of the court dated and delivered on 17th August 2016 is the final decision of the court in this dispute.”

15. The Advocates submitted that they are entitled to earn interest on the fees in accordance with **Rule 7** of the **Advocates Remuneration Order**, which stipulates as follows;

“An advocate may charge interest at 9 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

16. I have no doubt that ordinarily, interest is payable from the expiry of 30 days from the date when the Advocate delivers his Bill to his client.

17. However, as Majanja – J. noted in the case of **OTIENO, RAGOT & CO. ADVOCATES Vs NATIONAL BANK OF KENYA LIMITED, MISC. CIVIL APPLICATION NO. 61 OF 2015;**

“My understanding of Rule 7 of the Advocates Remuneration Order is that interest is chargeable from the expiration of one month from delivery of the bill of costs by the advocate to the client.

Evidence of delivery is necessary. To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the certificate of costs but the bill of costs.

.....

The amount of the bill may be different from the taxed costs. But for all

purposes of Rule 7, interest should be on the amount in the certificate of costs as those are the costs which are payable.”

18. In the event that the certificate of costs is for a sum equivalent to the sum cited in the Bill of Costs which had been delivered by the advocate to the client, then interest would be calculable from the expiration of one month from the date when the advocate delivered the Bill to his client.

19. If there is a divergence between the Bill delivered to the client and the sum cited in the Certificate of Costs, the client is only obliged to pay the sum pursuant to the said certificate of costs.

20. In that respect, the Advocates herein are on the same page with the court. They made the following submission in that regard;

“In truth, interest is only payable on the amount ultimately found to be due after taxation.

In all the precedents that I have cited above, the courts have been unanimous that interest is to be paid on what the court awarded as fees and not on what the Advocate claimed in his fee-note. It would obviously be wrong to award interest on what the Advocate has claimed, for it would mean that an advocate can deliberately draw up an unreasonably high bill or fee note, just to get a high award on interest. That cannot be the law.”

21. I am in complete agreement with that submission.

22. In this case, the Advocates sent a bill for the sum of Kshs 1,964,318/=.

23. As the court ultimately determined that the Advocates were entitled to fees in the sum of Kshs 826,907.87, I find that the bill which the Advocates initially delivered to their client was unreasonably high. I so find because the court ultimately determined that the Advocates were entitled to less than 50% of their original bill.

24. In my considered view, it matters not what was or was not the motivation for sending the original bill. Even if the advocates genuinely believed that the bill reflected a fair fee for the services they had rendered, the truth is that the court found the sum thus claimed to have been much higher than that which the advocates were entitled to.

25. The fact that the taxed costs were so much less than the original bill implies that the client was right to have refused to settle it.

26. If the client was right to have insisted on the bill being taxed, which process vindicated the said client, I hold the considered view that the client should not then be compelled to pay interest for the period which the client used to get the court to award a much lesser figure than that which the advocates had demanded.

27. If the advocates are awarded interest from a date which was 30 days after they delivered an erroneous bill; even though the interest be calculated on the taxed costs, I find that the client would be prejudiced. I so find because the time taken in order for the court to determine the correct figure was occasioned, in the first instance, by the erroneous figure cited by the advocates.

28. I reiterate that it is not the date of taxation or the date of issuance of a certificate of costs which, of itself, determines the date from when interest is payable on the advocate's costs.

29. If the original bill that was delivered to client is upheld by the taxing officer, the interest would be calculable from the expiration of one month from the date the advocate delivered his said bill to the client.

30. I share the view expressed by the advocates herein, that;

“.... the intention of the legislature in coming up with a requirement that an advance be served before the institution of proceedings was to encourage parties to settle disputes over fees without recourse to court.”

31. That is exactly why it is the correctness of the bill which the advocate delivers to his client, which will determine the date from when the fee would attract interest.

32. Therefore, if a correct fee note is delivered to the client, who then fails to settle it, the court would require the client to settle the said correct fee note, (as determined through the process of taxation), with interest calculable from the expiration of a month from the date when the correct fee note was delivered to the said client.

33. In this case, the original fee note delivered to the client, was erroneous. Therefore, it cannot attract interest from the expiration of a month from when it was delivered.

34. The correct fee was determined by the court on 17th August 2016, when the court delivered its Ruling on the reference.

35. Although the said Ruling was later set aside, it was eventually reinstated by the Court of Appeal on 31st January 2020.

36. Accordingly, I find that interest is payable on the taxed costs at the rate of 14% per annum from 19th September 2016, which is upon the expiration of 30 days from the date when the correct figure was determined.

37. The costs of the application are awarded to the advocates, together with a judgment in the sum of Kshs 826,907.87, plus interest thereon calculable from 19th September 2016.

DATED, SIGNED and DELIVERED at KISUMU This 8th day of October 2020

FRED A. OCHIENG

JUDGE