



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**MISC. CIVIL APPLICATION NO 284 OF 2013**

**BETWEEN**

**MURI MWANIKI & WAMITI ADVOCATES....APPLICANT/ADVOCATE**

**AND**

**KENYA ORIENT INSURANCE LIMITED.....RESPONDENT/CLIENT**

**RULING**

1. By a Notice of Motion dated 26<sup>th</sup> February, 2019, brought under the provisions of Section 51 (2) of the Advocates act, Rule 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules, the Applicant/Advocate seeks the following orders:

**1. Judgment be entered for the sum of Kshs. 135,696.36 (one hundred thirty-five, six hundred ninety-six) in costs certified by the Deputy Registrar on 10<sup>th</sup> August, 2018**

**2. The Kshs. 135,696.36 be paid with interest at 14% per annum from 07<sup>th</sup> July, 2015 being one month from the date of filing of the bill of costs until payment in full pursuant to Rule 7 of the Advocates Remuneration (Amendment) Order**

**3. That costs of this application be awarded to the Applicant/Advocate**

2. The Application is premised on the grounds among others that the Respondent/Client Deputy Registrar taxed the Advocates 'costs at Kshs. 135,696.36 which sum remains unpaid.

3. The Application is supported by an affidavit sworn by MARTIN G. MWANIKI on 26<sup>th</sup> February, 2019. He avers that the Applicant/Advocate acted for the Respondent/Client in KISUMU CMCC 987 OF 2001 CHANNAN AGRICULTURAL CONTRACTORS V KENYA ORIENT INSURANCE, that the Advocates' bill of costs was taxed at Kshs. 135,696.36 which sum remains unpaid. Annexed to the affidavit is the bill of costs dated 07<sup>th</sup> July, 2015 and Certificate of Taxation dated 10<sup>th</sup> August, 2018 marked **MGM1**, and **2** respectively.

4. In response to the application, the Respondent/Client through its advocate filed submissions on 19<sup>th</sup> June, 2019 in which it contends that the Applicant/Advocate is not entitled to interest at 14% for the reason that it did not claim it before filing the bill of costs. Reliance was placed on Machira & Co. Advocates v Arthur K. Magugu & another [2019] eKLR, D Njogu & Company Advocates V Kenya National Capital Corporation [2006] eKLR and Otieno, Ragot & Company Advocates v Kenindia Assurance Company Limited [2016] eKLR.

5. Regarding interest, I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides: -

**“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.” (emphasis added).**

6. Contrary to the finding in Otieno, Ragot & Company Advocates v Kenindia Assurance Company Limited (supra) that the bill denoted

to under the provisions of Rule 7 of the Advocates Remuneration Order does not refer to the bill of costs, the court of Appeal in **Machira v Magugu** (supra) specifically stated that the bill thereof is the bill of costs. Having so found, I find that interest at 14% is payable as long the amount of the bill has not been paid or tendered in full.

7. The bill of costs was delivered to the Respondent/client on 11<sup>th</sup> November, 2013 and interest is payable 30 days such delivery.

8. The upshot of this is that Notice of Motion dated 26<sup>th</sup> February, 2019, succeeds and is allowed in the following terms:

**a. Judgment is hereby entered for the advocate against the Respondent for Kshs. 135,696.36**

**b. Interest shall be paid at 14% from 11<sup>th</sup> December, 2013 till payment in full**

**c. The Advocate will also have the costs of this application.**

**DATED, DELIVERED AND SIGNED ON THIS 17<sup>th</sup> DAY OF October 2019**

**T.W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant - Amondi/Okodoi

For Applicant/Advocate - N/A

For Respondent/Client -N/A