



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC CIVIL APP NO. 192 OF 2017
IN THE MATTER OF THE ADVOCATES ACT
AND
IN THE MATTER OF ADVOCATE-CLIENT BILL OF COSTS
BETWEEN
KERONGO & COMPANY ADVOCATES.....ADVOCATE/APPLICANT
AND
AFRICA MERCHANT ASSURANCE
COMPANY LIMITED (AMACO).....CLIENT/RESPONDENT

RULING

Before me is a Notice of Motion dated 29th November, 2017 by the Advocate/Applicant under the provisions of section 51 (2) of the Advocates Act, Regulation 7 of the Advocates (Remuneration) Order and section 3A of the Civil Procedure Act. The application seeks orders that judgment be entered against the Respondent for Kshs. 51,175 being the taxed and certified costs, interest at Courts rate of 14% from 16th November, 2017 the date when the costs were certified, and the costs of the Application.

The Application is based on the grounds on the face of the same and the Supporting Affidavit of **PATRICK KERONGO** advocate sworn on 29th November, 2017. The grounds advanced in support of the Application are that the Advocate bill of costs was taxed on 16th November, 2017 and that on 3rd May, 2017, the Respondent was informed of the determination of the suit and of intention of the Applicant to have the costs taxed. A letter is annexed to that effect. That there is no Appeal or Reference and the applicant seeks to have judgment entered as prayed.

The Respondent did not file a Reply to the Application neither did they appear on the hearing date. There is an Affidavit of service on record indicating that the Respondent was served with the Application on 24th January, 2018.

I have considered the Application and the Supporting Affidavit. **Section 51 (2) of the Advocates Act** provides that,

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

In this matter, I find that the Respondent was properly served with the Application and as such having not disputed the Certificate of Taxation dated 24th November, 2017 for the amount of Kshs. 51,175/= , this Court will therefore enter judgment against the Respondent for the said taxed costs of Kshs. 51,175/=.

As to the interest, Regulation 7 of the Advocates (Remuneration) Orders provides that,

“7. 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 such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

The wording of this regulation is clear that for an Advocate to charge interest, there must have lapsed a period of one month after the bill was delivered to the Client. The regulation is also specific that the claim for interest should have been raised. The Applicant seeks interest from 16th November, 2017 when the costs were certified. I have perused the Court file and realised that when the matter came before the Deputy Registrar for mention on 16th October, 2017, the Applicant stated that he had served the Respondent with the bill of costs on 3rd August, 2017. However there is no Affidavit of Service on record to that effect in which case this court is not in a position to tell when the Bill of costs was served upon the Respondent. Further, there is no indication as to whether the Applicant had raised the claim for interest with the Respondent. Regulation 7 provides that the bill must not only be served but a claim for interest should also be raised by the Applicant. In such a case, I am not able to make an award on interest and prayer (b) therefore fails.

The application is therefore allowed in terms of prayers (a) and (c) only.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 2nd Day of **February, 2018.**

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L. NJUGUNA

JUDGE

In the Presence of

..... *For the Applicant*

..... *For the Respondent*