



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
HCCC NO.570 OF 2016
MICHAEL DAUD & ASSOCIATES.....ADVOCATES/RESPONDENTS
VERSUS
NATIONAL OIL CORPORATION OF KENYA.....CLIENT/APPLICANT
R U L I N G

The Applicant filed application dated 20th December 2017 brought under Section 51(1) & (2) and Order 51 of the Civil Procedure Rules seeking to enter judgment in favour of the Applicant and a Decree do issue for Kshs. thirty million, sixty two thousand, two hundred and twenty three shillings only being principal sum of costs taxed by the taxing master on 6th December 2017 and certified by Certificate of Costs issued on 13th December 2017 together with interest at 14% from 1st March 2017.

The bill was taken back to taxing master as per ruling delivered by this Court on 29th September 2017.the dispute was whether instruction fee was to be reduced to 65%.on 6th December 2017 the Applicant/Advocate conceded to reduction of instruction fees to 65% thus reduced from 26,428,819 to 17,178,732.35 and cost thus taxed at Kshs. 30,062,223. Certificate of Costs was issued on 13th December 2017.

The client/Respondent opposed calculation of interest from 1st march 2017 on ground that the quantum of fees had not been certified by the Taxing Master and judgment entered; that interest on Bill of Costs can only be awarded from the date judgment is entered after certification of costs by the Taxing Master. Further that awarding interest from the date of service of the bill will amount to awarding interest on amounts that are not due to the Advocate. That the Bill of Costs claimed Kshs. 58,255,260.46 and judgment sought is for kshs 30,062,223.

In oral submissions counsel for the client submitted that paragraph 7 of the Advocates Remuneration Order contemplate a situation where the Advocate plead interest in the Bill of Costs. He urged Court to look at the Bill of Costs annexed to the Notice of Motion and said claim of interest is not pleaded in the bill. He cited Miscellaneous Application No.52 of 2012 Lubulella & Associates Advocates vs N.K. Brothers where in paragraph 31 where the Court held that the Advocate filed his bill without raising interest and the claim must fail. He submitted that it is common practice that a party is bound by his pleading. He submitted that the claim for interest has come at the tail end and his client will be prejudiced.

He further submitted that there is no evidence of receipt of bill by the client on 23rd January 2017 or any other date. Further there is no Affidavit of Service stating when the Bill of Costs was served on the client. He submitted that Rule 7 makes the requirement mandatory and in the absence of prove of service, the benefit of doubt goes to the client. Lastly that time of service the amount claimed was not specified: that costs are ascertained after certification. He added that the amount was reduced from 58m to 30m and the mischief would not be cured if interest run before certification. That calculating interest from the date of judgment will serve justice in this circumstance.

Counsel for the Advocate submitted that the client relied on the grounds of opposition. He submitted that there is no evidence that the client were not served .that they cannot adduce evidence on grounds of opposition.

Secondly, interest is claimed from 1st March 2017 which is more than 30 days from the date the bill was served. That they are seeking interest at 14% in accordance with Advocates Remuneration Order. He submitted that for a claim of interest from the date of assessment the client ought to have deposited security with the Advocate which has been done in this case.

He concluded that Section 51 of Advocates Act provide award of judgment and interest. He prayed for judgment to be entered as prayed.

I have considered rival submissions by Counsels herein. I have also perused and considered paragraphs 6 and 7 of the ARO and authority cited by clients Advocate.

Paragraph 6 exempts a party from paying interest if the client gives security which is accepted by the Advocate. The security is given as the parties wait for the amount to be ascertained by Taxing Master. My interpretation of this paragraph is that interest is chargeable from the date the amount fell due even if the amount could not be ascertained. That means interest should run one month after service of the bill on the client as provided in paragraph 7 of ARO. It is averred in paragraph 3 of the supporting Affidavit that the Advocate herein filed the Bill of Costs on 15th December 2017 and served it on the client on 23rd January 2017. The client has not stated any facts to rebut service of the bill filed in Court. No deposit was made while awaiting taxation of the bill by the Taxing Master. From the foregoing the Advocate is entitled to interest on certified costs w.e.f one month after service of the Bill of Costs.

I therefore enter judgment for the Advocate/Applicant against the client/Respondent for Kshs. 30,062,223 plus interest on the said amount from 1st March 2017 until payment in full. Interest to be calculated at 14% as provided in paragraph 7 of Advocates Remuneration Order.

Dated and Delivered at Nairobi this 2nd day of February 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

..... COURT ASSISTANT

..... COUNSEL FOR APPLICANT/ADVOCATE

..... COUNSEL FOR RESPONDENT/CLIENT