



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 23 OF 2018

OMAYA & COMPANY ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

ATHUR JOSEPH OLUAL (Administrator of the

estate of Japheth OkumuOlual.....RESPONDENT/CLIENT

JUDGMENT

1. By a notice of motion dated 6.4.18, brought under Section 51 rule 1 of the Advocates Act Cap 16 Laws of Kenya; the applicant prays for orders:-

- a. THAT judgment be entered for the applicant against the respondent at Kshs. 93,359.90 in accordance with the certificate of costs issued by the Deputy Registrar**
- b. Interest be awarded at 14% per annum from 27.8.16 until payment in full**
- c. THAT the costs of this application be provided for**

2. The motion is premised on the grounds on the body of the application and the supporting affidavit sworn by Alex Otieno Omay, advocate of the High Court of Kenya, on 6.4.18. The court record shows that the advocate acted for the client in **KISUMU HCCC ELC NO. 25 OF 2016 JAPHETH OKUMU OLUAL V THE COUNTY GOVERNMENT OF KISUMU & 2 OTHERS**. That the bill of costs was taxed for the sum of Kshs. 93,359.90 and a certificate of taxation dated 21.3.18 was issued for the said sum. The applicant avers that the client has not paid the said amount despite of demand to do so.

3. When the application came for hearing on 9.5.18, Mr. Maua for the respondent submitted that the respondent was only opposed to interest.

4. 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.”

5. The rate of interest awardable is applicable from 30 days after the date of service of the Bill of Costs. There is no evidence to show when the bill of costs was served on the respondent but the firm of Mauwa & Company Advocates came on record for the respondent on 6th March 2018 and I will take that date to be the date that the Bill of Costs was served.

6. The upshot of this is that the notice of motion dated 6.4.18, succeeds and is allowed in the following terms:

- a) Judgment is hereby entered for the advocate against the Respondent for Kshs. 93,359.90***
- b) Interest shall accrue on the taxed costs at 14% per annum from 6.3.18 until payment in full***
- c) The Advocate will also have the costs of this application.***

DATED, DELIVERED AND SIGNED ON THIS 10th DAY OF May 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - N/A

Respondent - N/A