



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 422 OF 2012

A.M. KIMANI & CO.ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

KENINDIA INSURANCE CO. LIMITED.....CLIENT/RESPONDENT

RULING

The applicant is a firm of advocates which was hired by the respondent to provide legal services. At some point the parties must have fallen out because instructions were withdrawn and the applicant compelled to lodge a bill of costs. The said bill of costs was taxed and a sum of Kshs. 53,045/= was found to be due and payable to the applicant.

There is now an application by way of Notice of Motion under Section 51 of the Advocates Act and Order 50 Rule 1 of the Civil Procedure Rules seeking an Order that there be Judgment in terms of the certified costs, and that the respondent pays interest on the taxed costs at the rate of 14% per annum from 25th August, 2008 pursuant to rule 7 of the Advocates Remuneration Order, this being the date a month after the applicant delivered her fee note until 31st January, 2018 when the respondent made part payment. There is also a prayer for costs.

The grounds upon which the application is made are set out on the face of the application, and the supporting affidavit of Alice Mugure Kimani who is the applicant herein. The application is opposed and there are grounds of opposition filed on behalf of the respondent.

Following the filing of grounds of opposition by the respondent, the applicant filed yet another affidavit in reply to the said grounds. An informal suggestion by the court for the parties to attempt a settlement did not bear any fruits.

This matter is being decided on affidavit evidence and the authorities presented to the court. Section 51 (2) of the Advocates Act reads as follows,

“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.”

The applicant has exhibited a certificate of taxation dated 22nd December, 2017 in the sum Kshs. 53,045/=. There is no evidence that the said certificate has been set aside or altered by the court. Following that certificate, the applicant wrote to the respondent vide a letter dated 29th January, 2018

enclosing the said certificate. The applicant drew the attention of the respondent to the fee note dated 25th July, 2008 in which the applicant informed the respondent the fee note would continue attracting interest at 14% until it is fully paid.

Notice was then given to the respondent to pay a total of Kshs. 114,388.27 being the taxed costs and accrued interest within seven days failure of which action would be taken.

There is no evidence in the record that the respondent replied to the said letter. Rule 7 of the Advocates Remuneration Order provides as follows,

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

These provisions are clear and unequivocal. The applicant is only supposed to show that the fee note was raised and delivered to the respondent and that one month expired without settlement thereof for rule 7 to be triggered into operation. The applicant is also supposed to show that the claim of interest is raised before the amount of the fee note has been paid or tendered in full. Once this is shown, the burden shifts to the respondent to show otherwise.

There are several authorities that have addressed these issues. – see Wainaina Ireri & Co. Advocates vs. Kenya Bus Services Limited [2005] e KLR, Njeri Onyango & Co. Advocates vs. Ufundi Co-operative Sacco Limited [2015] e KLR and Otieno Ragot & co. Advocates vs. Kenindia Insurance Co. Limited [2016] e KLR.

I have looked at the rival affidavits and all grounds of opposition placed on record herein. The applicant has established to the satisfaction of the provisions of law, and persuaded the court that the orders sought should be granted. The circumstances attendant herein cannot absolve the respondent from liability to meet the demand raised by the applicant.

I am persuaded that judgment should be entered in favour of the applicant herein and that interest should accrue at the rate of 14% as prayed in the Notice of Motion dated 14th and filed on 25th May, 2018. The applicant shall also have the costs of this application based on the Advocates Remuneration Order.

Dated, signed and delivered at Nairobi this 5th day of December, 2018.

A. MBOGHOLI MSAGHA

JUDGE