



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL MISC. CAUSE NO. 110 OF 2015
IN THE MATTER OF ADVOCATE ACT
AND
IN THE MATTER OF THE TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT
BETWEEN
MOHAMED & SAMNAKAY.....APPLICANT/ADVOCATE
VERSUS
CROWN-BERGER KENYA LIMITED.....RESPONDENT
RULING

1) The firm of Mohamed & Samnakay, the applicant/advocate herein, took out the motion dated 6.10.2017 in which it sought for the following orders:

i. THAT judgment be entered for the sum of ksh.145,807/= for costs as certified by the Deputy Registrar of this court on the 11th September 2017.

ii. THAT judgement on interest be entered on the said sum of ksh.145,807/= at the rate of 14% per annum from the 3rd January 2016 being one month after service of the Bill of Costs on the respondent until payment in full.

iii. THAT the respondent do pay costs of this application

2) The motion is supported by the affidavit and supplementary affidavit of Zul Mohamed. When served Crown Berger Kenya Ltd, the respondent/client filed the replying affidavit of Peter Karati to oppose the application.

3) Though this court directed the applicant/advocate to prosecute the motion exparte, this court is bound to consider the responses filed by the respondent/ client in response to the motion. It is apparent from the record that the respondent/ client's replying affidavit was not struck out but was spared in broad interest of justice.

4) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have further considered the applicant's oral submissions. It is the submission of the applicant/advocate that the advocate/client Bill of Costs was taxed and a certificate of taxation issued on 17.9.2017.

5) It was pointed out that the bill was taxed at ksh.145,807/=.

The applicant further stated that it is entitled to interest on the taxed costs at the rate of 14% starting a month from the date of service of the Bill of costs.

6) In the replying affidavit of Peter Karati, the client/respondent avers that it paid the applicant/advocate ksh.145,807/= being the taxed costs awarded. The respondent/client further stated that there is no evidence that the applicant/advocate had sought for interest prior to the filing of the Bill of Costs. It was also pointed out that the applicant was paid ksh.5,313/= being 14% interest of the taxed cost from the date of

taxation to the date of settlement. The client/respondent urged this court to dismiss the motion.

7) In response to the client/respondent's averments the advocate filed the supplementary affidavit in which Mohamed Zul stated that the Bill of Costs made reference to the interest element as item 117 and the same being not within the purview of the taxing officer was not included in the award of taxed costs. The applicant/advocate admitted that it was paid the taxed costs plus interest by the cheques dated 9.10.2017 after the application had been filed.

8) It is clear from the material placed before this court that the advocate/client bill of costs was taxed at kshs.145,807/= and that the taxing officer did not award interest despite the fact that it was sought. The applicant/advocate stated that the taxing officer did grant the prayer for interest because she felt it was not within her purview.

9) The ruling and reason does not support the applicant's assertion. It is clear that the learned taxing officer completely ignored the request of interest. This court cannot therefore enter judgment in favour of the applicant/advocate in respect of interest yet the same was not awarded and the applicant has not challenged that decision by way of reference.

10) Having considered the averments and submissions, I am convinced that the applicant/client was fully paid the taxed costs plus accrued interest. I find no merit in the motion. The same is dismissed. A fair order on costs is to order which I hereby direct that each party meets its own costs.

Dated, Signed and Delivered in open court this 14th day of December, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent