



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 252 OF 2014

WILLIAM C. GITHARA t/a

GITHARA & ASSOCIATES ADVOCATES.....PLAINTIFF

AND

BURRELL INTERNATIONAL LTD.....1ST DEFENDANT

MACHARIA PAUL MWITHAGA.....2ND DEFENDANT

PRINCIPAL SECRETARY, MINISTRY OF LANDS,

HOUSING AND URBAN DEVELOPMENT.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. The application before me is brought by **WILLIAM GITHARA T/A GITHARA & ASSOCIATES ADVOCATES**. The applicant will henceforth be cited as “*the advocate*”.
2. He has asked the court to enter judgement in his favour, pursuant to the Certificate of Taxation, which awarded to him the sum of Kshs. 16,365,694/-.
3. The application is against **BURRELL INTERNATIONAL LIMITED** and **MACHARIA PAUL MWITHAGA** (*who will cited as “the respondents”*).
4. When canvassing the application, Mr. Ngugi, the learned counsel for the advocate, submitted that the court should proceed to enter judgement because there was no dispute as to retainer.
5. The advocate pointed out that the respondents were only raising issues concerning the date when interest should accrue, as well as the principal figure upon which the said interest should accrue.
6. It is common ground that the Advocate/Client Bill of Costs was served upon the respondents on 22nd October 2014.
7. It is also common ground that the advocate’s four (4) Bills of Costs were taxed and allowed in the sum of Kshs.16,365,694/-.

8. Prior to the ruling on taxation, the respondents paid to the advocate the sum of Kshs. 3,150,000/-. That sum was paid on 10th March 2015.

9. In the light of that payment, the respondents submitted that interest was only payable on the balance of the taxed costs.

10. But the advocate insisted that the whole sum of Kshs. 16,365,694/- should attract interest. As far as the advocate was concerned, the respondents cannot insist on a deduction of the sums which they had paid, as the respondents did not specify the particular feenote which they were paying, at the time when they remitted payment.

11. In my considered opinion, it was not open to the advocate to receive payment and keep it, but later argue that he was not aware about the specific fee-note which the respondents had rendered payment for. If the advocate required any clarification he should have sought for it soon after 10th March 2015.

12. In any event, the advocate has expressly deponed in his affidavit sworn on 3rd November 2016, in support of the current application, that;

“15. THAT despite the taxation and issuance of the said certificates, the 1st and 2nd defendants have made no further attempt to pay and have totally failed, refused and/or neglected to settle the balance of the taxed costs due to my firm amounting to Kshs.13,215,694/-”.

13. It is obvious from that deposition that the advocate knows that the money which the respondents remitted to him was intended to settle a portion of the taxed costs. And because the respondents had paid a part of the said taxed costs, it would be wrong to grant judgement in his favour for a sum which includes the part which was no longer owing.

14. As regards interest, it is correct that paragraph 7 of the Advocates (*Remuneration*) Order provides that interest may be charged from the expiration of one (1) month from the date when the advocate delivered his Bill of Costs to the client.

15. In the case of **KITHI & COMPANY ADVOCATES Vs MENENGAI DOWNS LIMITED, Misc. APPLICATION No. 1069 of 2013**, Mabeya J. said that;

“...once a judgement is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation”

16. The provision and the authorities interpreting it, make the point very simple and straight forward. However, there may arise difficulties in its application. Indeed, if the provision was to be applied in a literal sense, it could, conceivably lead to absurd results.

17. If for instance, the advocate had sent a Bill to his client for Kshs. 100 Million, but thereafter the Advocate/Client Bill of Costs resulted in the award of Kshs. 10 Million, that would imply that the client was right to have rejected the Bill for Kshs.100 Million.

18. In those circumstances, why should the client be obliged to pay interest from a date which was 30 days after the inflated Bill was given to him? To my mind, it would appear like the client was being penalized for having justifiably rejected the inflated bill, if he was compelled to pay interest dating back to the expiry of the 30 days after the said bill was given to him.

19. My take is that the interest on the costs ought not to pre-date the time when the client first received the bill. And the client is to be allowed 30 days to pay the bill. If he does not pay the bill, the same may attract interest at 14%.

20. It is not mandatory that the fee must attract interest at 14% after the expiry of 30 days from the date when it was given to the client.

21. In this case, as the taxed costs do not match the sum in the original Bill from the advocates, the clients cannot have been expected to know, prior to the taxation, the amount of money which would be payable to the advocate. It is only from the date when the Taxing Officer delivered her ruling on taxation that the respondents knew the fees payable to the advocate.

22. The justice of the case demands that the respondents be required to pay interest from the date when the ruling on taxation was delivered.

23. Accordingly, I now enter judgement in favour of the advocate for the sum of Kshs. 13,215,694/- with interest thereon at 14% per annum from the date when the Taxing Officer delivered the ruling on taxation.

24. The costs of the application dated 3rd November 2016 are awarded to the advocate.

DATED, SIGNED and DELIVERED at NAIROBI this 13th day of March 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Ngugi for the Plaintiff

Kimetto for the 1st Defendant

Kimetto for the 2nd Defendant

Collins Odhiambo – Court clerk.