

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS CAUSE NO. 62 OF 2015

OTIENO, RAGOT & COMPANY ADVOCATESADVOCATE/APPLICANT

VERSUS

KENINDIA ASSURANCE CO. LIMITEDCLIENT/RESPONDENT

RULING

By the Notice of Motion dated 20th August 2015 the Advocate/Applicant seeks judgment in the sum of Kshs.104,000/= together with interest at 14% per annum from 25th May 2015 until payment in full. It is also sought that the costs of this application be borne by the respondent.

The grounds for the application are that costs as between Advocate and client were taxed at Kshs.104,000/= and a certificate of costs issued; that there is no dispute as to the retainer and the certificate of costs has not been altered or set aside. Further that interest is due from 25th May 2015 being the date when the bill of costs was filed as provided in rule 7 of the Advocates Remuneration Order.

The Client/Respondent opposes the application on grounds that it is bad in law, frivolous, vexatious and an abuse of the court process; that it is prejudicial

to the Respondent, lacks merit and made under the wrong provisions of the law and more importantly that interest should be from the date of ruling and not the date of filing the bill of costs for taxation.

The application was canvassed by way of written submissions. Having considered the application and the rival submissions I must agree that it is neither frivolous nor bad in law. To the contrary I am satisfied that it has merit save on the issue of interest. I say it has merit as there is a certificate of costs that has neither been altered or set aside and going through the submissions there is no dispute on the retainer. The Advocate/Applicant is therefore entitled to have judgment entered in his favour for the costs certified to be due. However interest does not become due on the date of service of the notice for taxation and the bill of costs. Rule 7 of the Advocates Remuneration Order states:-

“7. An Advocate may charge interest at 14 per cent 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”

In my view the bill referred to in this rule is the Advocate's final bill setting out his disbursements and costs which he then requires the client to pay but not a bill which he intends to file for taxation. In the latter case the costs and disbursements are yet to be determined and the client cannot therefore fairly be called upon to pay interest on that which is yet to be determined. In my view in the latter case interest would become chargeable only upon the taxation of the bill by the taxing officer and upon certification of the costs by issuance of the certificate of costs in this case 13th July 2015.

In the circumstances judgment is entered for Advocate/Applicant for a sum of Kshs.104,000/= together with interest at 14% per annum from 13th July 2015 until payment in full. It is so ordered.

Signed, dated and delivered in open Court this 14th day of April 2016

E. N. MAINA

JUDGE

In the presence of:-

Mr. Siganga for Advocate/Applicant Holding Brief for Alinaitwe

Miss Aron for Client/Respondent

CC: Felix Magutu