



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. APPLICATION NO. 153 OF 2012

IN THE MATTER OF ADVOCATES – CLIENT BILL OF COSTS

AND

**IN THE MATTER OF PREPARATION OF A TRUST DEED INVOLVING OSMAN ELSEK
AND MICHAEL NJENGA**

BETWEEN

MUNYITHYA MUTUGI, UMARA & MUZNA CO ADVOCATES

(Formerly known as JOSEPH MUNYITHYA & CO ADVOCATES APPLICANT

AND

ELSEK & ELSEK CONSTRUCTION LIMITED.....RESPONDENT

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REPUBLIC OF KENYA

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MISC. APPLICATION NO. 154 OF 2012

IN THE MATTER OF ADVOCATES – CLIENT BILL OF COSTS

AND

IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 LAWS OF KENYA

BETWEEN

MUNYITHYA MUTUGI, UMARA & MUZNA CO ADVOCATES

(Formerly known as JOSEPH MUNYITHYA & CO ADVOCATES APPLICANT

AND

ELSEK & ELSEK CONSTRUCTION LIMITED.....RESPONDENT

ARISING FROM

HC CIVIL SUIT NO. 109 OF 2011

DIAMOND TRUST BANK KENYA LIMITED.....PLAINTIFF

VERSUS

ELSEK & ELSEK CONSTRUCTION LIMITED DEFENDANT

RULING

1. This Ruling relates to two applications both dated 13th October 2014 in both of the files whose title is above.

2. In HC Misc Application No. 153 of 2012 the Applicant seeks for judgments against the Respondent for Kshs 293,108/= with interest at 14%.

3. In HC Misc Application No. 154 of 2012 the Applicant seeks judgment against the Respondent for Kshs 706,311/= with interest at 14%.

4. The amount the Applicant seeks in judgment in both matters related to the Applicants, taxed costs. Those costs arose from the Applicant's a firm of advocates, representation of the Respondent. That relationship is not denied.

5. I have had occasion to Rule in respect this applicant's application for judgment to be entered against the same Respondent in respect of taxed costs in HC Misc Application No. 151 of 2012. That Ruling was delivered on 25th June 2015 and for convenience I shall refer to the authorities I relied on in reaching my decision.

6. In both applications before me in this Ruling the costs have been taxed by the taxing master. That being so the case **LUBULELLAH & ASSOCIATES ADVOCATES -V- N.K. BROTEHRS LIMITED 920140 eKLR** is relevant. It was held in that case thus:

“The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside an/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the applicant against the respondent herein for the taxed sum indicated in the Certificate of Taxation...”

7. The Respondent having not filed a reference against the taxation, as provided under the Advocates (Remuneration) Order it cannot resist the Applicant's application for judgment.

8. On the issue of interest that the Applicant seeks I find that the Applicant has failed to satisfy the provisions of paragraph 7 of the Advocates (Remuneration) Order. That paragraph provides-

“an advocate may charge interest at 14 per cent per annum on his disbursement 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.”

9. Regarding the provisions of that paragraph the court in the case MURI MWANIKI & WAMITI ADVOCATES –V- JOHN NGIGI NG’ANG’A & ANOTHER [2014] eKLR had this to say:

“My understanding of Rule 7 of the advocates Remuneration order is that interest is chargeable from the expiration of one month from delivery of the bill of costs by the advocate to the client. Evidence of delivery is necessary. To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the certificate of costs but the bill of costs...The amount of the bill may be different from the taxed costs. But for all purposes of Rule 7, interest should be on the amount in the certificate of costs as those are the costs which are payable.”

10. Having found that the Applicant is entitled to judgment for the amount of taxed costs and having found no basis to award interest at 14% I grant the following orders:

- a. **Judgment is hereby entered for the Applicant against the Respondent in respect to HC Misc Application No. 153 of 2012 Kshs 293,108/= and in respect to HC Misc Application No. 154 of 2012 Kshs 706,311/=.**
- b. **The Applicant shall have interest for the amount in (a) at court rate from the date of this Ruling until payment is full.**
- c. **The Applicant is awarded costs of the Notice of Motions dated 13th October 2014 in HC Misc Application No. 153 and 154 of 2012.**

DATED and DELIVERED at MOMBASA this 2ND day of JULY, 2015.

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

C/A Kavuku

For Applicant:

For Respondent:

Court

Ruling delivered in their presence/absence in open court.

MARY KASANGO

JUDGE