



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC MISC. NO. 11 OF 2014**

**ANTHONY THUO KANAI T/A**

**A. THUO KANAI ADVOCATES.....APPLICANT**

**-VERSUS-**

**VISHISHT TALWAR.....RESPONDENT**

**RULING**

**Introduction**

1. This is a quarrel between an advocate and his estranged client over the advocate's yet to be paid professional fees. The Applicant is Anthony Thuo Karai trading as A. Thuo Kanai Advocates. The client is one Vishisht Talwar. The Client is the Respondent before me.

2. Briefly, the Applicant filed his Advocate/clients Bill of Costs ("the Bill") on 14<sup>th</sup> January, 2013 as against the Respondent. The Respondent contested the Bill by way of filing a rather prolix Notice of preliminary objection. These were filed on 21<sup>st</sup> February, 2014. Alongside the Notice of Preliminary Objection, the Respondent also filed an Affidavit intituled "Affidavit in opposition to the bill of costs by the Advocate Anthony Thuo Kanai t/a A. Thuo Kanai Advocates". The gist of both the preliminary objection and the Affidavit were that Advocate was not entitled to any costs as the advocate rendered services not to the Respondent but to a third party in Cannon Assurance Ltd. The Respondent did not deny instructing the Advocate/Applicant but contented that it was Canon Assurance Ltd who was responsible for payment of the Advocates costs. The Respondent further contended that the Advocate was an in-house Counsel who was not entitled to any additional remuneration besides his employment recompense. The preliminary objection was heard by the Deputy Registrar (L.M. Wachira) who duly rendered herself with a dismissal of the same. As the parties had also filed submissions on the Bill, the Deputy Registrar proceeded to tax the Bill. The taxing master made substantive reduction on the fees allowable to counsel. An amount of Kshs. 875,559.20/= inclusive was awarded to the Advocate on 8<sup>th</sup> April, 2014. Apparently, on the same day the Taxing master also gave reasons, albeit without either party's prompting, of the taxation and further directed that both the ruling and reasons for taxation be availed to the parties upon payment of the requisite copying charges. Both the Advocate and the Respondent were represented in court before the Deputy Registrar on that day. That was on 8<sup>th</sup> April, 2014.

3. A month later the Advocate occasioned the issuance of a certificate of taxation and thereafter promptly filed a Notice of motion. The motion sought judgment to be entered in the Advocates favour in the sum certified by the Allocatur. The motion also sought interest at the rate of 14% p.a. In support of the motion the Advocate swore an affidavit and also filed written submissions on 31<sup>st</sup> July, 2014. The Respondent in opposing the motion filed a Replying Affidavit. The Respondent also filed written submissions.

4. The Applicants submissions were straight to the point. That the Bill had been taxed and a certificate of taxation issued on 8<sup>th</sup> May, 2014. The Allocatur had not been challenged. That a retainer was not in dispute as the Respondent had on no less than two occasions on oath admitted having instructed the Applicant.

5. In my view there is no contest in this matter. The certificate of taxation has not been altered or set aside, likewise the issue of retainer has been determined before a competent forum previously. I would not agree for now to any suggestion that that issue is in dispute, rather it has been determined that there was a retainer but the Respondent would like, amongst other challenges, to challenge that determination. For now the requirements of Section 51(2) of the Advocates Act (Cap 16) Laws of Kenya have been fully satisfied and I find no reason why I should not enter judgment for the Applicant as prayed in the Notice of Motion dated 15<sup>th</sup> May, 2014. I would also exercise my discretion to award interest to the Applicant. Through the history of the rather casual client-advocate relationship between the Applicant and the Respondent is relatively relevant in the circumstances it is apparent that the Respondent is not intent in paying even a penny to the Applicant. Such litigation history is certainly relevant to the exercise of my discretion in awarding or denying interest. I would thus award the applicant interest on the sum of Kshs. 875,559.20 at the rate of 14% p.a. from the 10<sup>th</sup> day of May, 2013 being one month following the date of delivery of the fee note to the Respondent.

6. I note that the Respondent's response and opposition to application herein was largely pegged to the fact that the Respondent has filed an appeal as well as an application for stay of the orders of 8<sup>th</sup> April, 2014 (taxation) pending hearing of the Appeal. I can only point out that the current proceedings have never been stayed. That is why the taxation proceeded and a certificate of costs was issued. Perhaps the Respondent may be minded to file another application for stay pending appeal now that judgment has been entered and the orders of 8<sup>th</sup> April, 2014 duly effected.

7. The Notice of Motion dated 15<sup>th</sup> May, 2014 is allowed as prayed with costs to the Applicant.

8. Orders accordingly.

**Dated, signed and delivered at Nairobi this 13<sup>th</sup> day of November, 2014.**

**J. L. ONGUTO**

**JUDGE**

**In the presence of:-**

..... for the Applicant

.....for the Respondent