



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI

MISCELLANEOUS APPLICATION NO E005 OF 2021

NYONGESA & CO ADVOCATES.....APPLICANT

VERSUS

CARLO SORIANO LUIGI T/A

DOUBLE HEART RESORT MALINDI..... RESPONDENT

RULING

1. The parties had advocate-client relationship with the Applicant rendering legal services to the Respondent in cause number ELRC No 80 of 2018. It appears that the said relation came to a close prompting the Applicant to tax the Advocate-Client Bill of Costs before the Deputy Registrar of this court. In a ruling delivered on 8th December 2021, the Bill of Costs was taxed at Ksh. 214,359.70 and a Certificate of Costs duly issued on 20th December 2021.

2. The Applicant, keen to recover the amount taxed, has now filed this application to have judgment entered in his favour for Ksh. 214,359.70 as taxed. The application dated 19th January 2022 was served on the Respondent on 22nd January 2022. An affidavit of service in this respect has been filed by the Applicant.

3. The matter came up for hearing on 2nd February 2022. By this time, the Respondent had not filed any objection to the application. Consequently, the Applicant sought for orders as prayed in the said application.

4. I have considered the application. It is filed pursuant to the provisions of section 51(2) of the Advocates Act as read with rule 7 of the Advocates Remuneration Order. Section 51(2) aforesaid provides as follows: -

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

5. I note that the retainer herein has not been disputed by the Respondent. Similarly, the amount that appears in the Certificate of Costs as issued by the Deputy Registrar of the court has neither been set aside nor varied. Therefore, the certificate represents the final figure of the amount due to the Applicant as legal fees for services rendered.

6. As has been observed in *Eddy Nicholas O Orinda P/A One and Associates Advocates v Victoria Commercial Bank Limited [2020] eKLR*, an advocate who has a Certificate of Costs need not file suit to seek that judgment be entered in his/her favour in terms of the Certificate of Costs. It is enough to seek for this order summarily in the taxation file. This saves parties unnecessary costs of litigation. In highlighting this issue the court, quoting the decision in *Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR*, stated as follows: -

“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 and/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 that was issued on 25th November 2012.”

7. Under rule 7 of the Advocates Remuneration Order, 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, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.” In the case of *Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR*, the Court of Appeal was of the view that this rule applies so as to entitle an

advocate to apply interest on the fees taxed and or agreed at the rate of 14% per annum but that such interest will only run from one month after delivery of the bill to the client. Further, the Court of Appeal indicated that for this to happen, the advocate must have included the claim for interest in the bill that was delivered to the client. If the demand for interest was not included, then interest is chargeable under section 26 of the Civil Procedure Act as per the court's discretion (see Murgor JA's decision).

8. In view of the foregoing, I find that the Applicant though entitled to a claim for interest may not claim interest under rule 7 of the Advocates Remuneration Order as this was not included in the bill that he delivered to the Respondent and which was placed before the Deputy Registrar for taxation. He may only seek interest as suggested in the Court of Appeal decision aforesaid. I will therefore enter judgment in favour of the Applicant for interest at court rates on the taxed sum from the date of taxation till payment in full.

9. Final Orders: -

a) Judgment is entered in favour of the Applicant against the Respondent for the sum of Ksh. 214,359.70 as more particularly set out in the Certificate of Costs between the parties dated 20th December 2021.

b) The Applicant is awarded interest on this amount to run at court rates from the date of taxation of his bill of costs till payment in full.

DATED, SIGNED AND DELIVERED ON THE 17TH DAY OF FEBRUARY 2022

B. O. M. MANANI

JUDGE

In the presence of:

Mr. Nyongesa for the Applicant

No appearance for the Respondent

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this Ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI