



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO.2 OF 2020

CHARLES GOMBA

T/A CHARLES GOMBA & CO. ADVOCATES.....APPLICANT

VERSUS

FESTUS MWANJA.....RESPONDENT

RULING

The applicant filed application dated 2nd July, 2020 under the provisions of section 51(2) of the Advocates Act and paragraph 7 of the Advocates (Remuneration) Order and seeking the following orders;

- 1. Judgement be entered for the applicant as against the respondent for the sum of Ksh.139, 738.00 being the duly taxed costs plus 14% interest per annum from 28th February, 2020 until payment full.*
- 2. Costs of this application be provided for.*

The application is made on the grounds that on 14th January, 2020 the applicant filed his Bill of Costs of equal date against the respondent for services rendered in ELRC Cause No.1626 of 2016 – Festus Mwanja versus Punchline Limited. On 29th January, 2020 the Bill of Costs and Notice of Taxation was duly served upon the respondent thereby attracting 14% interest per annum per paragraph 7 of the Advocates (Remuneration) Order.

On 15th May, 2020 the Bill of Costs was taxed for Ksh.139, 738 and despite being aware of the ruling the respondent has neglected and refused to settle the said sum. The Certificate of Taxation dated 19th June, 2020 has not been altered or set aside by this court.

In his affidavit the applicant avers that he was instructed by the respondent in ELRC Cause No.1626 of 2016 where he was claiming Ksh.534, 380.90 as terminal dues but refused to pay the legal fees for work done as a result of which the applicant filed his Bill of Costs and which was taxed and Certificate of Taxation issued for the sum of Ksh.139, 789 and the respondent has refused to pay necessitating this application.

Despite being served the respondent did not reply.

The respondent filed application dated 8th June, 2020 and seeking for orders that the taxation ruling dated 15th May, 2020 by the Deputy Registrar be set aside and the applicant's agents and executors be restrained from executing or demanding from him any monies arising out of the taxation ruling of 15th May, 2020. The respondents in making this application gave the grounds that on 12th August, 2016 he instructed the applicant to file suit against his former employer, Punchline Limited to recover his terminal dues following unfair termination of employment. The applicant filed ELRC Cause No.1626 of 2016 and judgement was delivered on 2nd October, 2019 against the employer on 2nd October, 2019 but he was not informed of the details. He booked a meeting with the applicant and was told there were on-going negotiations and was directed to sign an agreement to receive Ksh.119, 020 in cash and left without knowing the total amount awarded. Later he was served with a bill of costs for the sum of ksh.278, 075 and which was taxed on 15th May, 2020.

The respondent has also filed his supporting affidavit in support of his application as set out above.

The applicant in response filed Notice of Preliminary Objection and on the grounds that;

- 1. A ruling on Taxation is challenged through Referee under Rule 11 of the Advocates (Remuneration) Order and not through an application seeking injunction Orders.*

2. The failure by the respondent/applicant to follow the provisions laid down under Rule 11 of the Advocates (Remuneration) Order renders this application fatal and incurably defective.

For these reasons the applicant is seeking the application be dismissed with costs.

The basis of the applicant's application is section 51 (2) of the Advocates Act which provides that;

The certificate of the taxing officer by whom a 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.

The Applicant has submitted that he was retained to represent the respondent in ELCR Cause No.1626 of 2016 and which is admitted by the respondent.

Upon the completion of the matter, the applicant filed Bill of Costs which was taxed and the Certificate of Costs herein has not been set aside or altered nor a Reference filed. Therefore the amount of the costs herein is conclusive as held in the case of **Ahmednasir Abdikadir & Co. Advocates versus National Bank of Kenya Limited [2005] eKLR.**

The Applicant also relied on under Rule 7 of the Advocates Remuneration Order Rule 7 to claim interest. It states that;

An advocate may charge interest at 14% per annum on his disbursements and cost, 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.

The respondent did not challenge the applicant save to file his Notice of Motion seeking to have the ruling on taxation stopped in execution. An application filed pursuant to the provisions of section 51(2) of the Advocates Act and paragraph 7 of the Advocates (Remuneration) Order can only be challenged through a reference. The respondent has not followed such procedure and where he was dissatisfied with the taxation and the or Bill of Costs, the procedure to challenge the same is not what he has done.

I have considered the subject Notice of Motions Application and the Affidavit in support and I find that there is a Certificate of Taxation dated 19th June, 2020. I find that as annexed to the supporting Affidavit a copy of the Bill of costs that was taxed and the respondent was served. The Deputy Registrar by ruling dated 15th May, 2020 in the sum of Ksh.139, 738 and which was brought to the attention of the respondent and no reference was filed.

There is no challenge against the Taxation and/or the Certificate of Taxation. The Application was heard unopposed

As regards the interest rates, I find that the provisions of Rule 7 of the Advocates Remuneration Rules provides for interest rates at 14% per annum, payable from the 30th day from the date on which the Bill of Costs was delivered. The Bill of Costs herein is dated 19th June, 2020, therefore interest is payable from the 20th July, 2020.

Accordingly, application dated 2nd July, 2020 is hereby allowed as prayed and with costs.

Application dated 8th June, 2020 is irregular and is hereby dismissed.

DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF JANUARY, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and