



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.E001 OF 2021

(Before D.K.N.Marete)

MULEKYO AND COMPANY ADVOCATESAPPLICANT

VERSUS

NOLTURESH LOITOKTOK WATER AND

SANITATION CO.LTD.....RESPONDENT

RULING

This is an application coming to court vide an Amended Notice of Motion dated 16th February, 2021. It seeks the following orders of court;

1. *THAT judgment be entered for the sum of Kshs.TWO HUNDRED AND EIGHT ONE THOUSAND , SIX HUNDRED AND TEN (KSHS.281,610.00) in favour of the Applicant against the Respondent together with interest at 14% with effect from 22nd May, 2019 pursuant to Rule 7 of the Advocates Remuneration Order.*
2. *THAT the costs of this Application be provided for.*

It is grounded as follows;

1. *That the Deputy Registrar taxed and awarded the Applicant herein advocate-client costs of TWO HUNDRED AND EIGHTY ONE THOUSAND, SIX HUNDRED AND TEN (KSHS.281,610.00) in respect of MISC APPLICATION NUMBER 13 OF 2019.*
2. *That A Certificate of Taxation dated 25th September, 2019 was issued to the Applicant to that effect.*
3. *That prior to filing of the said bill the Respondent had been served with Demand Notice dated 22nd May, 2019 to pay the said fees.*

This application is not defended, or at all. The Respondent remained mum, despite service.

The Claimant/Respondent in her written submission dated 23rd March, 2021 seek to rely on the authority of Section 51(2) of the Advocates Act provides thus;

“the certificate of 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.”

She further relies on the authority of **Nyaundi Tuiyott & Co.Advocates v African Marchant Assurance Co.Limited (2018) eKLR Misc Application No.78 of 2017** where the court observed thus;

“...11.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 20th day from the date on which the Bill of Costs was delivered. The Bill of Costs herein was received

by the Respondents on 22nd February 2017, therefore interest is payable from the 22nd March 2017...”

She further buttresses her case by reliance on Rule 7 of the Advocates Remuneration Rules which provides thus in support of her case for interest on taxed costs;

“An advocate may charge interest at 14% 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 interests is raised before the amount of bill shall have been paid for or tendered in full”.

Like is expressed earlier, this application is not defended. The respondent has not in any way participated in its litigation. Her case is therefore absent and unknown, making it difficult to come up with a level headed finding.

In as much, the Applicant therefore prays for the judgment to be entered as prayed. Our choices are limited.

I am therefore inclined to allow the application and order as follows;

- i) The application dated 28th January, 2021 be and is hereby allowed as prayed.
- ii) That judgment be and is hereby entered for the sum of Kshs.281,610.00 in favour of the Applicant against the Respondent.
- iii) The Applicant is entitled to an interest rate of 14% on the Bill of Costs accruing from 25th October, 2019.
- iv) That the parties shall bear their costs of the application.

Dated and delivered at Nyeri this 30th day of June, 2021.

D.K.Njagi Marete

JUDGE

Appearances

- 1. Mr. Mulekyo instructed by Mulekyo & Company Advocates for the Claimant/Applicant**
- 2. No appearance for the Respondent.**