



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

MISC. APPLICATION NO. 39 OF 2020

AMONDI AND CO. ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

COUNTY GOVERNMENT OF KISUMU.....CLIENT/RESPONDENT

RULING.

1. The ruling herein relates to an application dated 24th May, 2021 brought pursuant to the provisions of Section 51 of the Advocates Act Cap.16 Laws of Kenya. The applicant seeks orders that the certificate of costs in respect of the taxation order made on 17th February, 2021 for the sum of **Kenya Shillings Eight Hundred and Sixty-Two Thousand One Hundred only (Kshs. 862,100/=)** be adopted as judgment and decree of this court together with interests at 14% per annum from 18th August, 2020 until payment in full.
2. The applicant further seeks orders that interest accrued on the costs and disbursements due to the applicant be awarded from the date of filling of the bill for taxation on 18th August, 2020 till payment of the amount in full.
3. The application is supported by an affidavit sworn by Dahlin Mathairo an Advocate practicing in the Firm of Amondi and Co. Advocates.
4. The application is premised on the grounds that the Applicant was retained by the Respondent to represent it in Employment and Labour Relations Court **Petition No. 39 of 2017** at Kisumu. and further that costs in the matter were taxed on 17th February, 2021 **at Kshs. 862,100/-** and a certificate of costs dated 21st May, 2021, issued.
5. The Respondent opposed the application vide grounds of opposition dated 3rd June, 2021 wherein, the Respondent states that the application lacks merit and should be dismissed with costs.
6. The matter was canvassed by way of written submissions. Both parties filed their submissions.
7. The applicant submits that Section 51(2) of the *Advocates Act* grants this court power to enter judgment in an advocates favour on taxed costs. The applicant sought to rely on the case of *Nairobi Hcc JR 69/2012-R-V Ivyland Park Ltd & City Council of Nairobi* to buttress their position.
8. It is the applicant's further submission that Rule 7 of the Advocates Remuneration Order provides for interest on costs at 14% until payment in full. The applicant sought to rely on the case of *Nairobi Milimani Misc.Application No. 296 Of 2012 – Makhecha & Co. Advocates & Central Bank of Kenya* to support this position.
9. The applicant submits that in the bill of costs dated 18th August, 2020 and served on 31st August, 2020, it sought fees pegged on interests at 14% from the date of instructions and that the same suffices pursuant to Rule 7 of the Advocates Remuneration order.
10. It is submitted for the Respondent that there is no decree yet in the matter and that what the applicant seeks the court to do, is to convert the certificate of costs into a judgment of the court and subsequently a decree.
11. The Respondent further submits that it is only after judgment has been entered that parties can engage on the issue of the rate of interest, as it is only then, that interest begins to run.

Determination

12. The applicant's prayer before this court is that the certificate of costs in respect of the taxation order made on 17th February, 2021, be adopted as judgment and decree of this court, together with interests at 14% per annum from 18th August, 2020 until payment in full. A further prayer is for an order that interest accrued on the costs and disbursements due to the applicant, be awarded from the date of filling of the bill for taxation on 18/08/2020, till payment in full.

Issues for Determination:

- i. Whether the Certificate of taxation of costs should be adopted as a judgment and decree of the court
- ii. Whether the applicant is entitled to interest as prayed.

Whether the Certificate of costs should be adopted as a judgment and decree of the court

13. The basis for the prayer herein, is that the applicant is entitled to the costs and disbursements in the certificate of costs from the date of judgment till payment in full in accordance with Rule 7 of the Advocates Remuneration Order.

14. Section 51(2) of the Advocates Act empowers this court to enter judgment in favour of an advocate on taxed costs, except where a certificate of costs has been varied or set aside or where there is a dispute as to retainer. In the case of *Lubullellah & Associates ds N.K. Brothers Limited (2014) eKLR* the court observed that:

“The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no refence against his ruling or there has been a ruling and 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 recovery of costs.”

15. The applicant's costs were taxed at **Kshs. 862,100/-** and this fact is admitted by both parties to this suit.

16. I am satisfied that there is no dispute as to retainer as the Respondent has not denied instructing the Applicant. It is also evident that the certificate of costs dated 21st May, 2021 has not been set aside nor altered and hence the same is final as to the amount of costs covered therein. (*See D Njogu & Company Advocates V Kenya National Capital Corporation [2006] eKLR*)

17. Accordingly, the court finds that the applicant is entitled to the judgment as provided for under Section 51(2) of the Advocates Act and the Certificate of Costs in respect of the taxation order made on 17th February, 2021, for the sum of Kshs. 862,100/- is hereby adopted as judgment and decree of this court with interest at 14% from the date of this ruling until payment in full.

Whether the applicant is entitled to interest

18. On the issue of interest, Rule 7 of the Advocates Remuneration Order provides for interest at 14% per annum and which is payable from the 30th day after the day the Bill of costs was delivered to the Respondent.

19. The only document attached to the application subject of this ruling is a certificate of costs. Like the Respondent counsel submitted, there is no affidavit of service or other evidence to show that service of the certificate of costs was effected on the Respondent and when this service was made.

20. Interest starts running after the 30th day of service of the certificate of costs. For reason that no evidence of service has been adduced before this court, the court is unable to award interest as prayed and will instead order that interest of 14% will apply from the date of this ruling.

21. The costs of the application are awarded to the applicant.

22. Orders accordingly.

SIGNED, DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF OCTOBER, 2021

CHRISTINE N. BAARI

JUDGE

Appearance:

MS. MATHAIRO PRESENT FOR THE ADVOCATE/APPLICANT

MS. OGWARE H/B FOR MR. OMONDI FOR THE CLIENT/RESPONDENT

CHRISPO/CHRISTINE OMOLLO - COURT ASSISTANTS