



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MISC. CIVIL CASE NO. 100 OF 2013

NJERI ONYANGO & CO. ADVOCATES.....PLAINTIFF

VERSUS

UFUNDI CO-OPERATIVE SOCIETY.....RESPONDENT

RULING

By a Notice of Motion application dated 13th August 2013, pursuant to the provisions of **Section 51** of the **Advocates Act** and **Order L Rule 1** of the **Civil Procedure Rules**, the applicant seeks orders:-

- (a) **That** costs as certified by the Deputy Registrar on 20/5/2012 be made judgment of the court.
- (b) **That** the court do order the said costs to be paid with interest at the rate of 14% from 24/8/2012, being the date a month after the fee-note was presented to the respondent until payment in full, pursuant to **Rule 7** of the **Advocates Remuneration Order**.
- (c) **That** the costs of this application be awarded to the Advocate/Applicant.

The application is based on the grounds that the said costs have already been taxed and certified yet the respondent has not settled the same in full or at all.

The application is predicated upon the annexed affidavit of **Jane Njeri Onyango** sworn on the 13th day of August 2013.

On behalf of the applicant it was urged that the defendant/respondent was served with certificate of costs exhibited herein as **"JNO1"** on 5th June, 2013.

That despite service the defendant/respondent has failed and/or neglected to pay the same. Instead the respondent/defendant has belatedly filed an application under certificate of urgency (out of time) to frustrate the applicant from recovering her lawful costs.

That the fact of retainer is not in dispute as the respondent/defendant has not in their said application denied ever instructing the applicant.

That pursuant to **Rule 7** of the **Advocate Remuneration Order**, the applicant is seeking interest one month from the date they presented their fee note, which in this case was 24th August 2012. In that regard the applicant relied on exhibit "**JNO1**".

That given the evidence presented herein the respondent/defendant application dated 11th June 2013 is a sham, frivolous and should accordingly be struck out and judgment entered in favour of the applicant.

The application is opposed. On behalf of the respondent it was admitted that the bill of costs was taxed. Thereafter a reference was filed. A ruling was delivered dismissing the reference. The respondent has since filed Notice of Appeal but has not filed an appeal yet.

That essentially what the respondent is challenging is interest at the rates of 14%. That in any event interest should apply from the date the High Court confirmed the amount taxed.

In addition thereto what is further challenged is that the fee note presented was for Sh.9,500,000 while the figure taxed is Sh.15,806,890/80.

Rule 7 of the Advocates Remuneration Order provides as follows:-

"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 such claim for interest is raised before the amount of the bill has been paid or tendered in full."

That provision is instructive and is as clear as day light. Accordingly the advocate may charge interest at the rate of 14% p. a provided that the claim for interest was raised before the amount of the bill has been paid or tendered in full.

The respondent has not filed an appeal to the Court of Appeal. In any event there could be no appeal as leave to appeal had neither been sought nor obtained.

Even if there was an appeal I call in aid the authority of MACHARIA NJERU -VS- CCK [HCCC No. 1029 of 2002]. In that case there was a reference pending. There was an application for entry of judgment. That notwithstanding the court entered judgment in favour of the advocate/applicant. That case is similar to the present case.

That with regard to the certificate of costs. I call in aid the authority of WAINAINA IRERI & CO. ADVOCATES -VS- KENYA BUS SERVICE LTD [H.C. MISC. APPL. No 222 of 2005]. It is noteworthy that the court entered judgment in similar circumstances.

Equally as regards interest at the rate of 14% I am persuaded by the authority of WAINAINA IRERI & CO. ADVOCATES -VS- KENYA BUS SERVICES LTD, MISC. CIVIL APPLICATION NO. 222 of 2005.

Last and not least **Section 51 (2)** of the Advocates Act 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."

I have perused the certificate of taxation dated 20th May, 2013. Having done so, I am satisfied that there is no alteration to the said certificate. There is also no evidence that the same has been set aside. Accordingly, the certificate of taxation dated 20th May, 2013 is final with regard to the amount of costs being Shs.15,806,890/80 [Fifteen Million, Eight Hundred and six thousand, Eight hundred and Ninety and eight cents].

Accordingly in terms of the provision of **Section 51 (2)** of the Advocates Act, I am inclined to award judgment, which I hereby do, in the sum of Sh.15,806,890/80 to the advocate/applicant.

Equally, I award interest at the rate of 14% in line with Rule 7 of the Advocates. Remuneration order.

The said interest should be payable one month after the bill was tendered i.e 24th August 2012 until payment in full.

The applicant will also have the costs of the application. It is so ordered.

Dated, Singed and delivered at Nairobi this 14th day of March, 2016.

N. R. O. OMBIJA

JUDGE



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