



**Kinyanjui Njuguna & Co Advocates v Board of Trustees National
Social Security Fund (Miscellaneous Application E438 of 2022)
[2024] KEHC 7847 (KLR) (Commercial and Tax) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E438 OF 2022**

JWW MONG'ARE, J

JUNE 24, 2024

BETWEEN

KINYANJUI NJUGUNA & CO ADVOCATES APPLICANT

AND

**THE BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY
FUND RESPONDENT**

RULING

1. By a Notice of Motion dated 23rd October 2023 brought under Order 51, Rule 1 of the *Civil Procedure Rules*, Section 52 of the *Advocates Act* and Rule 7 of the *Advocates (Remuneration) Order*, the Applicant seeks orders:-
 1. That the Honourable Court be pleased to enter judgment/ decree for Kshs. 121,628/-.
 2. That interest be provided for at 14% per annum from 14th March 2019 until payment in full.
 3. That the cost of the Application be awarded to the Applicant.
2. The grounds set on the face of the application and the annexed affidavit sworn by Advocate Kinyanjui Theuri on 23rd October 2023, are that the costs due to the Advocates in relation to the services rendered in Kisii Misc HC App 99 of 2011, *Republic v Chief Magistrate Court, Board of Trustees (NSSF) & Isaac Nderitu Githui (Ex-Parte)* were taxed by the Court at Kshs.121,628/- and a Certificate of Taxation issued but the Respondent has continually failed to pay legal fees despite demand and notice thereof and that the Respondent has not disputed the fees.
3. In response, the Respondent filed a ground of opposition on the grounds that prayer 2 of the notice of motion has no legal basis and it legally untenable, frivolous, vexatious and misconceived.



4. On 5th March 2024, the Court directed the parties to file their written submissions.

Analysis and Determination

5. I have considered the application, the grounds of opposition and the submissions. Section 51 (2) of the *Advocates Act* provides that:-

“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.”

6. The Applicant submitted that it is entitled to interest at 14% p.a. from 14th March 2019 because that was the date that it sent the correct fee note to the Respondent. It relied on the decision of the court in the case of *D. Njogu & Company Advocates v Kenya National Capital Corporation* [2006] eKLR in addition to Paragraph 7 of the *Advocates (Remuneration) Order* which provides that:-

“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.”

7. From the above, it is clear that the advocate was entitled to charge interest one month from the delivery of the bill dated 6th June 2022. However, there is no basis for the Applicant to charge interest from that period as it has not availed evidence to show that it raised a claim for 14% interest when the bill was served as required. See *Machira & Co. Advocates v Arthur K. Magugu & Another* [2019] eKLR and *Kitbi & Company Advocates v Menengai Downs Limited* [2015] eKLR.

8. In the upshot, the Application dated 23rd October 2023 is therefore allowed in the following terms:-

1. Judgment be and is hereby entered in favour of the Applicant as against the Respondents in the total sum of Kshs. 121,628/- with interest thereon at fourteen (14%) per cent per annum from the date the certificate of taxation was issued by the Court on 5th October 2023 until payment in full.
2. Costs of the Application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JUNE, 2024.

.....
J.W.W. MONG'ARE
JUDGE

