



**Sim Advocates LLP v Zohari Leasing Limited (Miscellaneous Civil Application
E061 of 2022) [2024] KEHC 10354 (KLR) (21 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION E061 OF 2022
GL NZIOKA, J
AUGUST 21, 2024**

BETWEEN

SIM ADVOCATES LLP APPLICANT

AND

ZOHARI LEASING LIMITED RESPONDENT

RULING

1. By a notice of motion application dated 11th September 2023, brought under the provisions of; section 51 (2) of the *Advocates Act* (Cap 16) Laws of Kenya, paragraph 7 of the *Advocates Remuneration Order* and Order 51 Rule 1 of the Civil Procedure Rules, the applicant is seeking for the following orders: -
 - a. That judgment be entered for the taxed advocate-client costs of Ksh. 141,818.20 as contained in the certificate of costs dated 29th June 2023, with interest thereon at the rate of 14% p.a. with effect from 27th April 2023 until payment in full.
 - b. That the costs of this application be provided for.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Anthony Simiyu, an Advocate of the High Court of Kenya and a partner in the applicant's firm. He deposed that, the respondent retained the applicant's firm to defend it in Chief Magistrate's Civil Suit No. 322 of 2020.
3. That the applicant's firm represented the respondent as instructed and filed an advocate-client bill of costs, which was taxed on 27th April 2023, in the sum of Kshs. 141,818.20. Subsequently a certificate of taxation was issued on 29th June 2023 and the same has not been varied and/or set aside by any court.
4. Further, despite issuance and service of the said certificate, the respondent has not paid the taxed sum and remains indebted to the applicant. That as a result, the applicant is prejudiced by being kept away



from its legal fees. The applicant avers that in the given circumstances, it is in the interest of justice that the application be allowed as prayed.

5. Upon considering the application, the court ordered that, the same be served for hearing on 7th May 2024. On the material date, the applicant informed the court that it had served the respondent but there was no proof thereof vide an affidavit of service. As such the matter was stood over to 19th June 2024 and the applicant was directed to serve the respondent afresh.
6. The respondent was served with a hearing notice as evidenced by the affidavit of service sworn by Anthony Simiyu on 11th June, 2024. However, the respondent did not appear in court on the scheduled date. As such the application is deemed to be unopposed.
7. Be that as it were, I have considered the application in the light of the materials placed before the court. The relevant law applicable is provided for under section 51(2) of the Advocates Act, which states that: -

“The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of 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.”
8. In that regard, I note that the applicant has produced evidence of the certificate of taxation issued on 29th June 2023. I further note that the subject certificate of taxation has not been set aside nor varied. Further there is no dispute on retainer therefore, there is no justification to disallow the application.
9. However, as regards interest, it suffices to note that the provision of section 51 (2) of the Advocates Act do not provide for interest. But Rule 7 of the Advocates Remuneration Order 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.”
10. Pursuant to the afore, I note that the only document annexed to the affidavit in support of the application, is the certificate of taxation. There is no evidence thus it is not possible to tell when bill was delivered to the respondent. Therefore, the applicant can only get interest on a date which falls on one (1) month from the date of delivery of the bill (to be established by the parties) and interest shall be paid until payment in full.
11. Consequently the notice of motion application dated 11th September 2023 is allowed as prayed in prayer (1) and (2) save that, the interest payable on the sum sought shall be payable as directed herein.
12. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 21ST DAY OF AUGUST, 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Simiyu for the applicant

N/A for the respondent

Ms. Ogutu: court assistant

