



P. I Samba & Co. Advocates v Buzeki Investment Group Limited (Miscellaneous Case E1055 of 2020) [2023] KEHC 3958 (KLR) (Commercial and Tax) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CASE E1055 OF 2020**

A MSHILA, J

APRIL 28, 2023

BETWEEN

P. I SAMBA & CO. ADVOCATES ADVOCATE

AND

BUZEKI INVESTMENT GROUP LIMITED CLIENT

RULING

Background

1. The notice of motion dated April 7, 2022 was brought under section 51 (2) of the [Advocates Act](#), paragraph 7 of the [Advocates Remuneration Order](#), order 51 rule 1 of the [Civil Procedure Rules 2010](#), and sections 1A, 1B and 3A the [Civil Procedure Act](#) for the following orders;
 - a. Judgment be entered for P. I. Samba & Company Advocates in terms of the certificate of taxation dated March 31, 2022.
 - b. Interest at the rate of 14% be deemed to have accrued from the date of the service of the bill of costs until payment in full.
 - c. A decree be extracted and drawn in terms of the taxed costs and interest
 - d. Costs be awarded to the applicant.
2. The application was supported by the sworn affidavit of Pennynah Samba who stated that the bill of costs dated September 15, 2020 was served on September 25, 2020, the amended bill dated February 17, 2021 was served on August 2, 2021.
3. The court delivered its ruling in the taxation on January 31, 2022 in the presence of both parties. To date no settlement in any amount or at all of the taxed costs has been paid by the respondent. It is only



just fair and proper that the applicant be allowed to initiate execution proceedings for the taxed costs in terms of the orders sought hereby.

Applicant's Case

4. It was the applicant's case that the bill of costs dated September 15, 2020 was served on September 25, 2020, the amended bill dated February 17, 2021 was served on August 2, 2021.
5. The court delivered its ruling in the taxation on January 31, 2022 in the presence of both parties. A copy of the certificate of taxation dated 31st March. To date no settlement in any amount or at all of the taxed costs has been paid by the respondent.
6. The applicant argued that it is only just fair and proper that the applicant be allowed to initiate execution proceedings for the taxed costs in terms of the orders sought hereby.

Respondent's Case

7. In response the respondent stated that, the parties herein entered into an advocate client relationship *vide* an oral retainer. Under the said retainer, the parties agreed that the advocate would handle both contentious and non-contentious matters on behalf of the client and all of its other associate or related companies and the companies' directors; and the mutual agreement and understanding was that the advocate would raise a fee note of Kshs 150,000 each month together with a separate invoice for transport disbursements for payment by the client.
8. Further, since the commencement of the retainer between the parties, the advocate has diligently raised invoices each month and the client has duly honoured all the invoices raised. The said invoices clearly indicated retainer for the respective months.
9. On that basis alone, the advocate was not entitled to tax her bill of costs given that she had already been paid for the services. Nevertheless, the advocates bill of costs was taxed at Kshs 12,342, 858/= *vide* a ruling dated January 31, 2022.
10. After the client was served with the bill of costs, the client instructed the current advocates on record for the client to handle the matter and defend the client's interests. On account of the strenuous financial challenges which the client was facing at the time, there was a huge turnover of staff at the client's offices which in turn resulted in significant delays in proper communication between the client and the advocates; and also delays in furnishing the advocates with sufficient documentation to appropriately defend the bills of costs. Additionally, due to the financial constraints which the client was facing, there was also a challenge in providing proper instructions to the advocate to defend the bill of costs.
11. It was the respondent's contention that the advocate has not disclosed what the monthly sum of Kshs 150,000.00 which she used to be paid for. The said amount of Kshs 150,000.00 was to cater for all non-contentious legal work such the joint venture agreement herein between the client and Arua Merchantile Limited.
12. Unless given an opportunity to challenge the taxing master's ruling, the client stands to suffer irreparable loss since the advocate will proceed to obtain judgment against the client as per the certificate of taxation dated March 31, 2022.

Issues For Determination

13. The court has considered the application together with the response therewith and frames the following issues for determination;



- a. Whether judgment be entered for P. I. Samba & Company Advocates in terms of the certificate of taxation dated March 31, 2022?
- b. Whether interest at the rate of 14% should be deemed to have accrued?

Analysis

14. The respondent herein has raised issues with regard to the retainer agreement between it and the advocate. The same issue was addressed by the taxing officer in the ruling dated January 31, 2022. The said decision was not challenged by the respondent herein. It is therefore noteworthy that the certificate of taxation dated March 31, 2022 was not and has not been challenged by the client in accordance with the provisions of rule 11 of the *Advocates Remuneration Order*.
15. Accordingly, the court finds that the certificate of taxation issued in this matter has not been challenged as provided for under the *Advocates Remuneration Order*.
16. The applicant/advocate has approached the court and sought for judgment to be entered in terms of certificate of taxation dated March 31, 2022. It is not in dispute that the advocate bill of costs dated February 17, 2021, the subject matter of this application was taxed at Kshs 12, 342, 858/= and the certificate of taxation subsequently issued on March 31, 2022.
17. On the issue of interest, the applicant has claimed for interest on the taxed amount at the rate of 14% per annum. Rule 7 of the *Advocates Remuneration Order* provides as follows: -

“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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”
18. The court has perused the amended bill of costs dated February 17, 2021 that was filed by the applicant and the court record at length and finds no evidence provided or produced by the applicant to support its claim that it had raised the issue that the interest would accrue at 14% p.a as envisaged in rule 7 above.
19. As this court stated in *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR, if an advocate files his bill of costs without raising the issue of interest, then it forfeits interest as provided for under rule 7 of the *Advocates Remuneration Order*.
20. The same position was reiterated in the holding in *Machira & Co Advocates v Arthur K Magugu & another* [2019] eKLR, where the Court of Appeal had an occasion to consider an advocate’s entitlement to interest under paragraph 7 of the *Advocates Remuneration* and stated:

“The learned judge found correctly in our view that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per annum at least one (1) month before filing the bill of costs. The appellant relied on a letter from counsel for the respondent to justify his position that the learned judge should have awarded him interest at 14% from the date of taxation. We note that the said letter refers to the decretal sum claimed while the issue of interest has not been addressed. The appellant did not produce a copy of his firm’s letter of August 9, 2001 referred to in the respondents’ counsels’ letter of September 20, 2001 to support his claim. Accordingly, we find that the learned judge did not err in finding that the appellant did not furnish the court with any evidence that they



had claimed interest at fourteen (14%) per cent at least one (1) month before they filed their bill of costs. They were therefore not entitled to interest at 14%.”

21. The import of the above is that the interest on the taxed amount will be disallowed.
22. The applicant has satisfied the conditions of section 51(2) of the *Advocates Act*. Consequently, the only order which commends itself to this court is to adopt the certificate of taxation dated March 31, 2022 as a judgment of this court made in favour of the applicant as against the respondent.

Findings And Determination

23. In the light of the foregoing this court makes the following findings and determinations;
 - i. The application is found to be meritorious;
 - ii. The certificate of taxation dated March 31, 2022 is hereby adopted as a judgment of this court.
 - iii. There shall be no order as to interest and costs.

Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 28TH DAY OF APRIL, 2023.

HON. A. MSHILA

JUDGE

In the presence of;

Miss Samba for the Advocate/Applicant

No appearance for the Respondent

Sarah-----Court Assistant

