



Amondi & Company Advocates v County Government of Kisumu (Miscellaneous Application 73 of 2020) [2023] KEHC 20861 (KLR) (30 May 2023) (Ruling)

Neutral citation: [2023] KEHC 20861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION 73 OF 2020**

JN KAMAU, J

MAY 30, 2023

IN THE MATTER OF ADVOCATE REMUNERATION ORDER

BETWEEN

AMONDI & COMPANY ADVOCATES ADVOCATE

AND

COUNTY GOVERNMENT OF KISUMU CLIENT

RULING

Introduction

1. In its Notice of Motion dated June 8, 2022 and filed on June 9, 2022, the Advocate herein sought for orders that the Certificate of Costs in respect of the taxation order made on May 10, 2022 for the sum of Kshs 3,760,371.89 be adopted as Judgment and Decree of this court together with interests at 14% per annum from the date of filing of the bill for taxation on March 4, 2020 till payment in full. He also sought that interest accrued on the costs and disbursement due to him be awarded from the date of filing of the bill for taxation on March 4, 2020 till payment of the same in full by the Client.
2. Christine Msando, an Advocate practicing in the Advocate's firm swore an affidavit in support of the said application. They averred that the Client instructed them to act on its behalf in Kisumu Petition No 8 of 2016 which they ably did to its conclusion and prepared and forwarded a final fee note in respect of the professional fee and disbursements to be settled by the Client.
3. They stated that the aforesaid Bill of Costs was taxed on May 10, 2022 at the sum of Kshs 3,706,371.89 to be paid by the Client and a Certificate of Costs certifying the same was issued. They pointed out that the said Certificate of Costs had not been altered or set aside by the court. They were emphatic that they were entitled to interest on costs and disbursements computed in the Bill of Costs at the rate of 14% per annum since the date of filing of the Bill as is contemplated in Rule 7 of the Amended Advocates Remuneration Order.



4. The Advocate's Written Submissions were dated and filed on July 14, 2022 while those of the Client were dated and filed on July 6, 2022. This Ruling is based on the said Written Submissions which parties relied upon in their entirety.

Legal Analysis

5. The Advocates relied on the provisions of section 51(2) of the *Advocates Act* cap 16 (Laws of Kenya) which empowers the court to enter judgment on taxed costs in favour of an advocate. In this regard, they placed reliance on the case of *Republic v Ivyland Park Ltd & City Council of Nairobi* (eKLR citation not given) where the court therein cited various cases amongst them *Abmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited* (eKLR citation not given) where the court arrived at the same conclusion.
6. They were also emphatic that Rule 7 of the *Advocates Remuneration Order* provides for interest on the said costs at fourteen (14%) per cent per annum until payment in full. They relied on the case of *Makbecha and Company Advocates v Central Bank of Kenya* [2020] eKLR where the court therein held that Rule 7 of the Advocates Remuneration Order entitles an advocate to charge interest above the normal or applicable rate of twelve (12%) per cent provided that the claim for interest was raised before payment or settlement of the advocate's bill of costs.
7. They pointed out that the Bill of Costs was filed on March 4, 2020 and had sought that interest be pegged at fourteen (14%) per cent from the date of instructions and that the same sufficed pursuant to Rule 7 of the *Advocates Remuneration Order*.
8. They invoked Section 26(1) and (2) of the *Civil Procedure Act* cap 21 (Laws of Kenya) and urged the court to find that the purpose of an award of interest was to compensate a claimant for being denied its money as stated in *Lata v Mbiyu* [1965] EA 592.
9. Although in its Written Submissions the Client indicated that it had opposed the application vide Grounds of Opposition dated June 27, 2022, the same were not on the court record. Be that as it may, this court was able to follow its arguments as set out in its Written Submissions as the ground of opposition was that the application was not meritorious and should then be dismissed with costs.
10. The Client also invoked section 51 of the *Advocates Act* and Rule 7 of the *Advocate's Remuneration Order*. It placed reliance on the case of *Lubulellah & Associates Advocates v N.K. Brothers Limited* [2014]eKLR which was cited by the Court of Appeal in the case of *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR where it was held that once a certificate of costs was issued and there was no reference against the decision of the taxing master, and the certificate of costs had not been set aside and/or altered, no other action was required save for entry of judgment by the court and that no suit for recovery of costs was required.
11. It argued that the Advocates were seeking to convert the certificate of costs into judgment of the court and subsequently into a decree, yet there was no decree contrary to section 26 of the *Civil Procedure Act*. It was its contention that it was only after judgment was entered and a decree extracted could the issue of the rate of interests and when the same ought to begin to run could be dealt with.
12. It urged the court to take a purposive interpretation of Rule 7 of the *Advocate Remuneration Order* which gave the impression that it applied when an applicant submitted the bill to a client and there was accord interest therein in the amount payable and it was from then that the thirty (30) days would begin to run and if the bill remained unpaid after thirty (30) days elapsed and the amount claimed was certain then the interests start to accrue (sic).



13. It added that application of Rule 7 of the *Advocate's Remuneration Order* was a discretion power that must be exercised in a judicious manner. It submitted that the use of the word, "may" meant that it was a possibility and not mandatory. It added that if the interests rate chargeable was mandatory, then the drafters of the rule ought to have used the verb "shall". It was emphatic that interest was only payable when it was claimed and before the amount was paid in full but that it was not mandatorily.
14. It referred this court to the case of *Mercy Mwangi t/a Mwangi Kingera & Company Advocates v Invesco Assurance Company Limited* [2017] eKLR where it was held that the discretion to be exercised by the court came with the power to reduce the period in which the interest was payable or to extend or alter the rate at which interest was payable or to withhold the entire interest payable in the interests of justice.
15. It urged the court to withhold interest all together because it was a public entity, that there was no agreement, that it was not clear whether the bill was submitted to it for settlement so as to determine when interest would begin to accrue and that the Bill of Costs was reduced astronomically. It was emphatic Rule 7 provided that interest would only accrue from the date of delivery of the bill of costs and not from the date of filing.
16. It was its contention that in the event this court was inclined to award interest, then it ought to be guided by section 26(1) of the *Civil Procedure Act* and the decision in *Otieno Ragot & Company Advocates v Kenya Air Ports Authority* (*supra*). It was apprehensive that the Advocate cannot purport to compute interest on the amount that is unknown at the time of filing of the bill or a suit.
17. 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.”
18. Rule 7 of the *Advocates (Remuneration) Order* provides that:-

“An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”
19. Having carefully considered the respective parties' Written Submissions, it was clear that the Certificate of Costs that was issued by the Taxing Officer had not been set aside and/or altered. Indeed, no reference under Paragraph 11 of the *Advocates Remuneration Order* challenging the decision of the said Taxing Master. It was also evident that the Client was not opposed to the adoption of the taxed costs as a judgment sum. What it objected was the interest accruing from the date of filing the Bill for taxation.
20. Notably, several courts have held that the court has the discretion to determine when interest ought to run. In the case of *Otieno Ragot & Company Advocates v Kenya Ports Authority* (*supra*), it was held that although Rule 7 entitled an advocate to claim interest, the time from when interest would run was not stipulated and was therefore left to the discretion of the court.
21. In the case of *D. Njogu & Company Advocates v Kenya National Capital Corporation* [2006] eKLR, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that



- the “correct fee note” meant a bill that was in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client did not dispute, or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.
22. This court took respectful view that Rule 7 of the [Advocates Remuneration Rules](#) is clear that interest is chargeable at fourteen (14%) per cent per annum, from the expiration of one month from the delivery of the bill to the client. There was therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
 23. Going further, interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served. Rule 7 of the [Advocates Remuneration Rules](#) provides that interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.
 24. It was not clear to this court when the bill was submitted to the Client for settlement. Although the Advocate claimed to have served the same upon the Client, it did not attach any document to prove the same. Be that as it may, this court noted from the proceedings before the Taxing Master that the Client was represented on May 28, 2020 when the parties first appeared before the Taxing Master. They Client was present when she delivered her decision on July 30, 2020.
 25. In the absence of any evidence of when the Bill of Costs was first delivered to the Client, this court took the firm view that the Client was certainly aware of the Advocate- Client Bill of Costs as at May 28, 2020. The Bill of Costs has remained unpaid to date.
 26. Bearing in mind the holding of [D. Njogu & Company Advocates v Kenya National Capital Corporation](#) (*supra*) which this court fully associated itself with, this court came to the firm conclusion that the one (1) month envisaged in Rule 7 of the [Advocates Remuneration Order](#) lapsed on June 28, 2020. Interest would thus accrue on the certified costs from June 29, 2020.
 27. The Client’s argument that there was no decree in place was immaterial. The certified costs became payable as the certificate of costs was not altered or set aside. The claim for payment of fourteen (14%) per cent per annum was raised in the present application and as the certified costs had not been paid, the same was payable.

Disposition

28. The upshot of this court’s decision was that the Advocate’s Notice of Motion application dated June 8, 2022 and filed on June 9, 2022 was partially merited and the same be and is hereby allowed in the following terms:-
 - a. Judgment be and is hereby entered in favour of the Advocate in the sum of Kenya Shillings Three million, seven hundred and sixty thousand, three hundred and seventy one and eighty nine cents only (Kshs 3,760,371.89) together with interest thereon at fourteen (14%) per cent per annum calculable after thirty (30) days from June 29, 2020.
 - b. Costs of this application be awarded to the Advocate.
29. It is so ordered.

DATED and DELIVERED at KISUMU this 25th day of May 2023

J. KAMAU



JUDGE

DATED, SIGNED and DELIVERED at KISUMU this 30th day of May 2023

M.S SHARIFF

JUDGE

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