



Mbai Waweru Advocates v Kenya Alliance Insurance Company Limited (Miscellaneous Civil Application E034 of 2022) [2023] KEHC 19249 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION E034 OF 2022**

**GL NZIOKA, J
JUNE 29, 2023**

BETWEEN

MBAI WAWERU ADVOCATES APPLICANT

AND

KENYA ALLIANCE INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. By a notice of motion application dated April 5, 2022 brought under the provisions of section 51(2) of the *Advocates Act*, (Cap 16) Laws of Kenya, Rule 7 of the *Advocates (Remuneration) Order* and Rule 51 of the *Civil Procedure Rules, 2010* the applicant is seeking for the following orders
 - a) That Judgment be and is hereby entered for the Applicant as against the Respondent for the sum of Kshs 40,264/= being the taxed costs in this matter.
 - b) That the taxed costs do attract interest at the rate of 14% per annum from the 8th day of June 2022 until payment in full
 - c) That the costs of this Application be borne by the Respondent
2. The application is based on the grounds thereto and an affidavit of Kairu Timothy Waweru, an Advocate of the High Court of Kenya practicing as such in the applicants' firm. It is the applicant's averments that, it represented the Respondent in Civil Case, Naivasha Chief Magistrate Civil case No. 63 of 2021 Dennis Omondi Omolo -vs- Wanja Pauline & another.
3. That subsequently the applicant filed and served Advocate-client Bill of costs after the Respondent failed to pay the legal fees. On November 17, 2022, the bill was taxed in the sum of Kshs 40,264 and a certificate to that effect duly issued on March 15, 2023



4. That, the certificate was forwarded to the Respondent on March 17, 2023, however at the time of filing this application, the Respondent has not raised any objection to the taxed amount and/or the certificate, nor had it set aside or altered in any way by the court. Neither has the Respondent paid the sum. Yet, there is no dispute to the retainer, hence the prayers herein.
5. The application was placed before the court on April 12, 2023, and the court ordered that, it be served for hearing on April 6, 2023. On the material date, the court was informed that the Respondent was served but was not in court and neither had it filed any response to the application. An affidavit of service was availed in support thereof.
6. I have considered the application in the light of the materials placed before the court and I note that, first and foremost the application is not opposed. Secondly, under section 51 of the *Advocates Act*, for the court to allow the application as herein, it must be satisfied that
 - a) The certificate of taxation has not been set aside or altered by the court.
 - b) The retainer is not disputed.
7. I have considered the documents annexed to the application herein and I note that, a certificate of taxation was issued on March 15, 2023, in the sum of Kshs 40,264. The same has not been set aside or altered. I further note that, there is no dispute to retainer. As a result I allow the application in terms of prayers (1) and (3). The interest on the taxed amount will be paid at courts rates from the date of filing this application until payment. The Respondent cannot bear interest occasioned by the delay of over one year by the applicant to file the subject application herein. Those then are order of the court

DATED, DELIVERED AND SIGNED ON THE 29TH DAY OF JUNE 2023

GRACE L. NZIOKA

JUDGE

In the presence of:-

Mr. Kamau for the Applicant

N/A for the Respondent

Ms Ogutu-Court assistant

