



REPUBLIC OF KENYA



**Otieno t/a OM Otieno & Co Advocates v African Merchant Assurance Company Limited
(Miscellaneous Application E028 of 2021) [2023] KEHC 21531 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS APPLICATION E028 OF 2021**

RL KORIR, J

JULY 31, 2023

BETWEEN

**OUMA MAURICE OTIENO T/A OM OTIENO & CO
ADVOCATES APPLICANT**

AND

AFRICAN MERCHANT ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. By Notice of Motion Application dated October 12, 2022, the Applicant moved this court for orders:-
 - I. That this Honourable Court be pleased to have the Certificate of Costs in respect of taxation order made on the November 24, 2021 for the sum of Kenya Shillings One Hundred and Forty Nine Thousand One Hundred (Kshs 149,100/=) adopted as Judgment and Decree of this court.
 - II. Consequent to prayer (I) hereinabove, the Court be pleased to charge interest on the taxed amount at the rate of 14% per annum from the date of service of the bill of costs that is from the October 6, 2021, until payment in full.
 - III. Costs of this Application be borne by the Respondent/Client.
 - IV. Such further and/or other orders be made as the court may deem fit and expedient.
2. The Application was brought under Section 51(2) of the *Advocates Act* Cap 16 Laws of Kenya, Sections 1A, 1B of the *Civil Procedure Act* and was anchored on the grounds on the face of the Application and on the Supporting Affidavit sworn by Ouma Maurice Otieno on October 12, 2022.
3. The Applicant stated that a Bill of Costs with respect to the advocate-client costs was taxed and allowed at a sum of Kshs 149,100/= all inclusive and a Certificate of Taxation was issued on November 30, 2021. That the Certificate of Taxation had not been challenged neither had it been set aside.



4. It was the Applicant's case that he was entitled to interest on costs and disbursement at the rate of 14% per annum since the date of filing the bill of costs as contemplated under Rule 7 of the *Advocates Remuneration Rules*. That the Bill of Costs had not been paid or settled in full hence the claim for interest was merited.
5. In his submissions, the Applicant stated that Rule 7 of the *Advocates Remuneration Order* was clear that interest was chargeable at 14% per annum from the expiration of one month from the delivery of the Bill of Costs to the client which was served on October 6, 2021. He relied on *Amondi & Co. Advocates vs County Government of Kisumu* (2022) eKLR.
6. The Application remained unopposed despite service. There is an Affidavit of Service dated January 25, 2023 on record sworn by Ouma Maurice Otieno showing that the Respondent was served on December 13, 2022 through Fargo Courier Services
7. I have considered the Notice of Motion Application dated October 12, 2022 and Applicant's Written Submissions dated October 17, 2022 and the only issue for determination was whether the Certificate of Taxation dated November 30, 2021 should be adopted as the Judgment of this court.
8. 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.
9. It is clear that the amount contained in the Certificate of Taxation is final and that this court has the power to enter Judgment for the taxed amount. There is no evidence to show that the Certificate of Taxation had been altered or set aside.
10. I fully associate myself with the finding in *Lubulellah & Associates Advocates vs NK Brothers Limited* [2014] eKLR, where it was held that:-

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment.”
11. With regards to the issue on interest on the taxed amount, Rule 7 of the *Advocates Remuneration Rules* 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.
12. The above provision is clear that interest can be charged by an Applicant one month after the Bill of Costs has been served to the Respondent. There is an Affidavit of Service on record dated October 19, 2021 and sworn by the Applicant indicating that the Respondent was served with the Bill of Costs on October 6, 2021. The Applicant opined that he had not been paid. This may very well be true. However, the issue of costs was supposed to be ventilated before the taxing officer as the role of this court is limited to adopting the Certificate of Taxation unless there was a Reference.



13. In the end, I proceed to adopt the Certificate of Taxation dated November 30, 2021 for the amount of Kshs 149,100/= all inclusive as the Judgment of this court. The amount stated in the Certificate shall attract interest at 14% per annum from the date of this Ruling until payment in full.
14. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 31ST DAY OF JULY, 2023.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of

Ms. Opondo for the Applicants,

N/A for the Respondents.

