



Gazemba Wekesa & Co Advocates v Trident Insurance Company Limited (Miscellaneous Civil Application E052 of 2022) [2023] KEHC 21670 (KLR) (23 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION E052 OF 2022
GL NZIOKA, J
AUGUST 23, 2023**

BETWEEN

GAZEMBA WEKESA & CO ADVOCATES APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. By a notice of motion application dated February 27, 2023, brought under the provisions of section 3A of the *Civil Procedure Act* (cap 21) Laws of Kenya; section 51 of the *Advocates Act* (cap 16) Laws of Kenya, and rule 7 of the *Advocates (Remuneration) Order*, the applicant is seeking for the following orders: -
 - a. That the court be pleased to enter judgment against the respondent in the sum of Kshs 70,378 certified on the certificate of taxation herein dated the February 22, 2023 together with interest at the rate of 14% per annum from August 22, 2022 until payment in full.
 - b. That a decree issues in respect of the sum of Kshs 70,378 certified on the certificate of taxation herein dated the February 22, 2023 together with interest at the rate of 14% per annum from August 22, 2022 until payment in full, and that the applicant be at liberty to execute for recovery of the same in such manner as a decree of this honourable court.
 - c. That the cost of the application be provided for.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Janet Nasimiyu Wekesa an advocate of the High Court of Kenya and practising in the applicant's firm. She deposes that, the respondent was served with a bill of costs dated July 15, 2022 and a taxation notice dated



July 19, 2022 and therefore had notice of the outstanding fees in compliance with paragraph 7 of the *Advocates (Remuneration) Order*.

3. That, the applicant's bill of cost was taxed in the sum of Kshs 70,378 and a certificate of taxation dated February 22, 2023 issued. That, the applicant wishes to realize the costs awarded in the taxation.
4. The sum certified in the certificate of taxation attracts interest at fourteen percent (14%) per annum from August 22, 2022, which date is the expiry of one (1) month after delivery of the bill of costs to the respondent. That, it is in the interest of justice and fairness that the orders are granted.
5. Upon considering the application, the court ordered that, the same be served for directions inter parties on; July 21, 2023. On the material date, Mr Mbugua for the applicant appeared in court and informed the court that the applicant had served the respondent although the affidavit of service had not been filed. The court set the matter for hearing on August 1, 2023 and directed the respondent to be served with a notice to show cause why the application could not be allowed as prayed.
6. However, when the matter came up for hearing on August 1, 2023, the respondent was not in court, despite having been served as evidenced by an affidavit of service dated; July 27, 2023 served by Janet Ochengo, the court process server. The application was deemed unopposed.
7. Be that as it were, I have considered the application in the light of the materials availed in support thereof. I note that the 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 costs issued on; February 22, 2023. The certificate of taxation has not been set aside nor varied and neither is there a there a dispute on retainer in the respective matter, therefore there is no justification to decline to issue the order for judgment.
9. However, as regards interest, it suffices to note that the provision of section 51 (2) of the *Advocates Act* does not provide for interest. However, 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. However, I note that the certificate of taxation was issued on the February 22, 2023. Therefore the applicant can only get interest from the date of service of the same and not the date claimed herein. The application is thus allowed in terms of prayer (1) save for the order on interest.
11. Prayer (2) is not allowed as the issuance of a decree and execution process is within the jurisdiction of the Hon Deputy Registrar and therefore judgment will only be executed upon issuance of the relevant decree. The cost of this application shall be borne by the respondent.
12. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF AUGUST 2023



GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Mbugua for the applicant

N/A for the respondent

Ms. Ogutu: court assistant

