



Mbai Waweru Advocates v Kenyan Alliance Insurance Company Limited (Miscellaneous Civil Application E033 of 2022) [2023] KEHC 21666 (KLR) (23 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION E033 OF 2022
GL NZIOKA, J
AUGUST 23, 2023**

BETWEEN

MBAI WAWERU ADVOCATES APPLICANT

AND

KENYAN ALLIANCE INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. By a notice of motion application dated April 5, 2023, 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 order 51 rule 1 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 advocate as against the respondent for the sum of Kshs 185,728 being the taxed cost in this matter.
 - b. That the taxed costs do attract interest at the rate of 14% per annum from the June 8, 2022 until payment in full.
 - c. That the costs of this application be borne by the respondent.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Kairu Timothy Waweru, an Advocate of the High Court of Kenya and practising in the applicant's firm. He deposes that, the applicant firm was retained by the respondent to represent it in Naivasha Chief Magistrate civil suit No 795 of 2019, David Mbugua Macharia v Peter Owino Oiro.
3. That, the respondent failed to settle the applicant's fees for services rendered and as a consequence the applicant filed and served the respondent with the advocate-client bill of costs. The bill of costs was taxed on November 17, 2022 in the sum of Kshs 185,728 and a Certificate of taxation issued on March 15, 2022. That the same was served upon the respondent on March 17, 2023.



4. That, the respondent did not object to the taxation of the bill of costs and neither has the certificate of taxation been set aside or altered by the court. Further, there is no dispute on the retainer. In the circumstances, the application should be allowed with interest at 14% per annum from the date of taxation on June 8, 2022.
5. Upon considering the application, the court ordered that, the same be fixed for inter parties hearing on; June 5, 2023. On the material date, Mr Muturi holding brief for Mr. Wanjohi for the respondent was present but the applicant was absent. The court set the matter for hearing on July 19, 2023 for the applicant to show cause why the application could not proceed expeditiously.
6. When the matter came up for mention on July 19, 2023, Mr Kamau for the applicant appeared and stated that the applicant was still interested in prosecuting the application. The court then ordered that the application be served afresh for a response on or before July 28, 2023. When the matter came up in chamber for directions on July 31, 2023 it was noted that the respondent was yet to file a response. The application was thus heard 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 applicable law 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 taxation issued on; March 15, 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 orders as prayed for in prayer (1).
9. As regards prayer (2) on interest, 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. Be that as it may, I note that the certificate of taxation herein was issued on the March 15, 2023 and served on March 17, 2023. Therefore the applicant can only get interest from the date of service thereof and not the date claimed herein. The costs of this application shall be borne by the respondent.
11. It is so ordered.

Dated, Delivered And Signed This 23Rd Day Of August 2023.

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Kamau for the applicant

N/A for the respondent



Ms. Ogutu: court assistant

