



**Kinyanjui Njuguna & Co Advocates v Invesco Assurance Company Limited  
(Miscellaneous Civil Application E056, E057, E058 & E059 of 2021 & 73,  
74 & 85 of 2019 (Consolidated)) [2023] KEHC 21339 (KLR) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21339 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CIVIL APPLICATION E056, E057,  
E058 & E059 OF 2021 & 73, 74 & 85 OF 2019 (CONSOLIDATED)**

**GL NZIOKA, J  
AUGUST 9, 2023**

**BETWEEN**

**KINYANJUI NJUGUNA & CO ADVOCATES ..... APPLICANT**

**AND**

**INVESCO ASSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated 9<sup>th</sup> September 2022, brought under the provisions of Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 section 48 and 51(2) of the *Advocates Act*, and Rule 7 of the Advocates (Remuneration) Order, the applicant is seeking for the following orders: -
  - a. That the Honourable court be pleased to consolidate the instant matter with: -
    - i. Naivasha miscellaneous application No. E056 of 2021
    - ii. Naivasha miscellaneous application No. E057 of 2021
    - iii. Naivasha miscellaneous application No. E058 of 2021
    - iv. Naivasha miscellaneous application No. E059 of 2021
    - v. Naivasha miscellaneous application No. 73 of 2019
    - vi. Naivasha miscellaneous application No. 74 of 2019
    - vii. Naivasha miscellaneous application No. 85 of 2019
  - b. That pursuant to prayer 1 above the Honourable court be pleased to enter judgment/decree for Kshs 327,669 tabulated as hereunder;



- i. Naivasha misc. application No. E056 of 2021: Kshs 37,326
  - ii. Naivasha misc. application No. E057 of 2021: Kshs 42,595
  - iii. Naivasha misc. application No. E058 of 2021: Kshs 44,119
  - iv. Naivasha misc. application No. E059 of 2021: Kshs 44,119
  - v. Naivasha misc. application No. 73 of 2019: Kshs 52,692
  - vi. Naivasha misc. application No. 74 of 2019: Kshs 52,692
  - vii. Naivasha misc. application No. 85 of 2019: Kshs 54,126
- Total KSHS 327,669

- c. That interest be provided for at 14% per annum from 27/03/2018 until payment in full.
  - d. That the cost of the application be awarded to applicant
2. The application is supported by the grounds on the face of it and an affidavit sworn by Kinyanjui Theuri an Advocate of the High Court of Kenya and partner in the applicant's firm. He deposes that, the subject matters relate to the same parties and involve similar claims for legal fees and therefore consolidation in necessary for expeditious disposal.
  3. That, the applicant's bills of costs in the matters have been taxed and certificates of taxation drawn, signed and issued. Further, although the respondent does not dispute the fact that the fees, claimed is due and payable, it has continuously failed to pay the same despite demand and notice.
  4. That, an advocate is legally entitled to fees earned in the course of his services in line with the Advocates Remuneration Order. Thus, the instant application is made in the sole interest and due realization of the legal fees earned.
  5. Furthermore, interest is payable at fourteen percent (14%) per annum from the date of demand and service of notice to settle the legal fees. That, if the court fails to grant the orders sought, the applicant will be prejudiced as the respondent is facing liquidity challenges.
  6. Upon considering the application, the court ordered that, the same be served for directions inter parties on; 25<sup>th</sup> July 2023. On the material date, Ms. Onyango holding brief for the applicant appeared in court and informed the court that it had served the respondent but unfortunately the applicant had not filed an affidavit of service. The court set the matter for hearing on 2<sup>nd</sup> August 2023 and directed the respondent to be served.
  7. However, when the matter came up for hearing on 2<sup>nd</sup> August 2023, the respondent was not in court, despite having been served as evidenced by an affidavit of service dated; 26<sup>th</sup> July 2023 served by Brian Kiptoo, the process server. In that case the application was heard unopposed.
  8. 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 is stipulated under section 51(2) of the *Advocates Act*, (Cap 16) Laws of Kenya, 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.”



9. In that regard I note that the applicant has produced evidence of the certificates of taxation issued in the respective files all dated; 9<sup>th</sup> September 2022.
10. It is also noteworthy that the respective certificates of taxation have 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 prayers (1) and (2).
11. However, I note that Naivasha miscellaneous application No. 73 of 2019 was included and dealt with in Naivasha miscellaneous application No. 81 of 2019. Hence the orders herein shall exclude the amount Kshs. 52,692 due in Naivasha miscellaneous application No. 73 of 2019, therefore the amount due herein is Kshs. 274,977 and that is what is allowed under prayer (2) of the application.
12. As regards prayer (3) on interest, it suffices to note that the provisions of section 51 (2) do 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.
13. However, I note that the certificates of taxation were issued on the 9<sup>th</sup> September 2022. The applicant can only get interest from the date of service of the same upon the respondent and not the year claimed herein. Therefore, interest is payable from the aforesaid dates at court rates and subject to proof thereof. The costs of this application is awarded to the applicant.
14. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 9<sup>TH</sup> DAY OF AUGUST, 2023.**

**GRACE L. NZIOKA**

**JUDGE**

**In the presence of;**

Mr. Khisa for the applicant

Ms. Kagena H/B for Ms Marasi for the respondent

Ms. Ogutu court assistant

