



Joe Ngigi & Co. Advocates LLP v Kenya Alliance Insurance Co. Ltd (Miscellaneous Civil Application E158 of 2022) [2023] KEHC 27613 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 27613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E158 OF 2022
F WANGARI, J
SEPTEMBER 29, 2023**

BETWEEN

JOE NGIGI & CO. ADVOCATES LLP APPLICANT

AND

KENYA ALLIANCE INSURANCE CO. LTD RESPONDENT

RULING

1. The Applicant vide a Notice of Motion dated 6/2/ 2023 and filed on date 8/2/ 2023 sought for the following orders: -
 - a. That judgment be entered in favor of the Applicant against the Respondent for the sum of Kenya shillings Eighty Two Thousand, Nine Hundred and Fifty (Kshs. 82,950/=) being the cost due to the Applicant as against the Respondent.
 - b. That the Respondent does pay to the Applicant the cost of this application together with interest on the taxed sum.
2. The application was based on grounds inter alia that the Respondent paid Ksh. 136,075/= being partial amount of the total taxed costs of Ksh. 219,025/=:, and leaving a balance of Ksh. 82,950/= where the Respondent has neglected or refused to settle.
3. The application was served upon the Respondent and an affidavit of Service dated 17/2/ 2023 was filed. The Respondent did not file his response. The matter was fixed down for hearing. Hearing notice was issued, but he did not appear. The application was heard ex-parte. Submissions were filed by the Applicant.

Analysis and Determination

4. I have considered the application, the supporting affidavit and the annexures thereto;



- a. Whether the application is meritorious;
 - b. What is the order as to costs?
5. I have perused through the proceedings. Certificate of Taxation was issued on 3/2/2023 for Ksh. 219,025/=. Section 51 (2) of the Advocates Act reads: -
- ‘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’.
6. 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.’
7. The Certificate issued by the Taxing officer was never set aside. It has been stated that the Respondent did a partial payment towards settlement of the same. This is an indication that the Respondent was not in opposition of the taxed costs. The balance payable now is Ksh. 82, 950/=.
8. The next issue is on the interest payable. From Rule 7 of the Advocates Remuneration Order, the Applicant is entitled to interest of costs at a rate of 14% per annum after the expiration of one month from the delivery of the bill of costs to the client.
9. The Applicant is seeking for the interest on the unpaid amount due. It has not been indicated when the partial amount was made by the Respondent. In the interest of justice, the interest starts to run from the date of filing this application i.e. 27/3/2023.
10. On the issue of costs, it is settled that the same follows the event. That is the import of Section 27 of the Civil Procedure Act. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others [2013] eKLR. In the present circumstances, I thus see no reason why I should deny the Applicant costs of the application.
11. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. That judgement is entered in favour of the Applicant against the Respondent, for Kshs. 82, 950/=
 - b. Interest on (a) above do accrue at the rate of 14% per annum, with effect from 27/3/2023.
 - c. Costs awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 29TH DAY OF SEPTEMBER, 2023.

F. WANGARI

JUDGE

In the presence of:

Mutuku Advocate h/b for Ngigi Advocate for the Applicant

N/A for the Respondent



