



Ouma Maurice Otieno t/a O.M. Otieno & Co. Advocates v African Merchant Assurance Company Limited (Miscellaneous Application E011 of 2022) [2023] KEHC 22676 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS APPLICATION E011 OF 2022
RL KORIR, J
SEPTEMBER 29, 2023**

BETWEEN

**OUMA MAURICE OTIENO T/A O.M. OTIENO & CO.
ADVOCATES APPLICANT**

AND

AFRICAN MERCHANT ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. By Notice of Motion Application dated 3rd November 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 22nd June 2022 for the sum of Kenya Shillings Ninety Three Thousand Six Hundred and Thirty Six (Kshs 93,636/=) 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 28th day of February 2022, 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 Advocate's 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 Advocate on 3rd November 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 93,636/= all inclusive and a Certificate of Costs was issued. That the said Certificate of Costs 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 dated 21st November 2022, the Applicant submitted that the Certificate of Costs issued on 25th October 2022 had not been set aside and that there had been no Reference challenging the taxing master. He relied on *Otieno, Ragot & Company Advocates vs Kenya Airports Authority (2021) eKLR*.
6. It was the Applicant's submission 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 28th February 2022. He relied on *Amondi & Co. Advocates vs County Government of Kisumu (2022) eKLR*.
7. The Application remained unopposed despite service. There is an Affidavit of Service dated 17th January 2023 on record sworn by Ouma Maurice Otieno showing that the Respondent was served with the present Application on 13th December 2022 through Fargo Courier Services.
8. I have considered the Notice of Motion Application dated 3rd November 2022 and Applicant's Written Submissions dated 21st November 2022 and the only issue for my determination was whether the Certificate of Taxation dated 25th October 2022 should be adopted as the Judgment of this court.
9. 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.
10. 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.
11. 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.”
12. 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.



13. 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 1st March 2022 and sworn by the Applicant indicating that the Respondent was served with the Bill of Costs on 28th February 2022. 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.
14. In the end, I proceed to adopt the Certificate of Taxation dated 25th October 2022 for the amount of Kshs 93,636/= 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 the issuance of the Certificate of Taxation being 25th October 2022.
15. Orders accordingly.

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

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R. LAGAT-KORIR

JUDGE

Ruling delivered virtually in the presence of Ms. Wakiaga for the Applicant, and in the absence of Cheboryot for the Respondent.

