



Joe Ngigi & Co. Advocates LLP v Trident Insurance Co Ltd (Miscellaneous Civil Application 128 of 2022) [2023] KEHC 22814 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION 128 OF 2022**

**HM NYAGA, J
SEPTEMBER 27, 2023**

BETWEEN

JOE NGIGI & CO ADVOCATES LLP APPLICANT

AND

TRIDENT INSURANCE CO LTD RESPONDENT

RULING

1. This is an application dated 8th February, 2023 brought pursuant to the provisions of Section 51(2) of the *Advocates Act*. It is the plea of the applicant that judgment be entered in its favour against the Respondent for the sum of Kenya Shilling One Hundred and Thirty Five Thousand, One Hundred (Kshs.135, 100/=) only being the certified costs due to it and that the Respondent does pay it the costs of this Application together with interest on the taxed sum.
2. The Application is premised on grounds inter alia That:-
 1. The Advocate- Client costs due to the Applicant herein have been taxed at Kenya Shilling One Hundred and Thirty Five Thousand, One Hundred (Ksh.135,100/=) in favour of the Applicant as against the Respondent and a certificate of taxation issued to that effect.
 2. The Respondent has neglected, refused and/or failed to settle the taxed costs.
 3. There is no dispute that the Respondent retained the Applicant as their advocate in respect of which advocate-client costs were taxed herein.
3. The Application is supported by an affidavit of Joseph N. Ngigi, Advocate of the High Court of Kenya sworn on the even date wherein he depones that the Applicant was instructed by the Respondent to act for the Defendant in Nakuru CMCC No. E034 of 2021 between *David Mwangi Kabogo vs Paddy Distributors Limited and Joyce Wangui Wachira*. Thereafter, it failed to pay legal fees thereby



necessitating filing of a bill of costs herein which was taxed on 29th November, 2022 in the aforesaid sum and a certificate of taxation issued to that effect.

4. He avers that the certificate of taxation has not been appealed against, set aside or altered by the Respondent and that it is only fair and just that the Judgment be entered as prayed together with interest thereof.
5. When faced with the application, the respondent opposed it via the grounds of opposition dated 2nd May, 2023.
6. The grounds of opposition is premised on grounds that:
 1. The application is misleading and misconstrued.
 2. The Application lacks merit.
 3. The Application is defective, frivolous and an abuse of the court process.
7. The parties thereafter agreed to canvass the Application by way of written submissions.
8. Only the Applicant's submissions are on record. The same were filed on 30th May, 2023.

Applicant's Submissions

9. The Applicant submitted that the grounds of opposition by the Respondent contained mere blanket denials of the Application and did not controvert any substantial issue therein.
10. The Applicant urged this court to grant the orders sought. To support its submissions, the Applicant relied on the case of *Mbai & Kibuthu Advocates v Mbo-I-Kamiti Farmers Company Limited* Nairobi (Milimani) HCMA No. 659 of 2004, Ochieng', J held that where there is no dispute as to the retainer and the bill has been taxed, the certificate of the taxing officer by whom the bill has been taxed shall, unless set aside or altered by the Court, be final as to the amount of costs covered thereby.

Analysis & Determination

11. The only issue for determination in my view is whether the Applicant is entitled to the orders sought.
12. Section 51(2) of the *Advocates Act* under which the application was based provides:

“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.”

13. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* [2006] eKLR it was held: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....”



14. Similarly in Misc. Appl. No. 698 of 2004 *A.N. Ndambiri & Co. Advocates vs Mwea Rice Growers Multipurpose Co-Operative Limited*, Waweru J expressed himself as follows:
- ‘In my understanding of the provisions of Section 51 (2) of the *Advocates Act*, it enables an advocate to get judgement for the taxed costs, without having to sue for it, provided that his client did not dispute the fact that the advocate had been instructed (or retained) in the first instance.’
15. In the case of *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR the court observed 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. An applicant is not required to file suit for the recovery of costs
16. Flowing from the above, it is clear the court can grant Judgment if there is no dispute as to the retainer.
17. In the instant case, the facts are not dispute as respondent did not file any Replying Affidavit.
18. To date the Certificate of Taxation has not been set aside or altered. In the circumstances, there is no reason to deny the Advocate, judgment as sought.
19. On the aspect of interest, I will be guided by the provisions of Rule 7 of the *Advocates Remuneration Order* which provides: -
- “An advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”
20. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs.
21. I am also guided by the Court of Appeal decision in *Otieno Ragot & Co. Advocates v Kenya Airports Authority* [2021] eKLR where court stated that :-
- “The rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursement and costs following submissions of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one (1) month from the date of delivery of the bill or fee note. The learned judge’s reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.”
22. In the instant matter, the affidavit of service on record dated 8th November,2022 demonstrates that the Respondent was served with the bill of costs on 4th November,2022 and I therefore find that thirty (30) days from the service of the bill to the client expired on 4th December,2022.
23. The upshot of this is that the notice of motion dated 8th February,2022 succeeds and is allowed in the following terms:
1. Judgment is hereby entered for the advocate against the Respondent for Ksh.135, 100/= pursuant to the Certificate of Taxation dated 13th January, 2023.



2. Interest shall accrue on the taxed costs at 14% per annum from 4th December,2022 until payment in full
3. I also award costs of this application to the Applicant.

24. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF SEPTEMBER, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Kinoti for applicant

Ondimu for respondent

