



REPUBLIC OF KENYA



KENYA LAW
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Odundo Odhiambo & Co. Advocates v Abugo (Miscellaneous Application E158 of 2021) [2023] KEHC 22711 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E158 OF 2021
HM NYAGA, J
SEPTEMBER 27, 2023**

BETWEEN

ODUNDO ODHIAMBO & CO. ADVOCATES APPLICANT

AND

RAPHAEL ABAYA ABUGO RESPONDENT

RULING

1. The Application for determination herein is the one dated 5th July, 2022 brought pursuant to Section 51(2) of the Advocates Act Cap 16 of the Laws of Kenya.
2. The Applicant prays that judgment be entered for the Applicant/Advocate in accordance with taxed costs herein together with interest thereon from the date of Bill of Costs on 20th August, 2021 and to be at liberty to execute against the Respondent. The amount in issue is Kshs.100,027.50/=.
3. The application is premised on the grounds set out on the face of the application and supported by the affidavit of Collins Odundo, an Advocate of the High Court of Kenya. He deponed that the Applicant was instructed by the Respondent to represent him in Nakuru Civil Case No.1298 of 2019 and it did conduct the interlocutory applications, prepared and served the pleadings and court documents, attended court and successfully prosecuted on behalf of the Respondent. Thereafter the Applicant did render its fee note for work done but the respondent failed to pay and consequently the Applicant filed Nakuru Misc. Application No.158 of 2021 on the 20th August,2021 presenting its advocate/client bill of costs for taxation.
4. The applicant further averred that the said bill was taxed at Ksh.100,027.50/= and the same has not been set aside or altered and the retainer has not been disputed.
5. He urged this court to grant the orders sought in the interest of justice.



6. The Application was duly served upon the Respondent as evidenced by the Affidavit of service on record dated 8th September, 2022 but failed to file his response.
7. When the application came for hearing on 12th June, 2023, the respondent was not present although he had been served with a hearing notice on 30th May, 2023.
8. The application is therefore not opposed.

Analysis & Determination

9. The only issue for determination in my view is whether the Applicant is entitled to the orders sought.
10. 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.....”
11. In the present case, there is no contention that the Advocate had instructions to act for the client in Nakuru CMCC No.1298 of 2019 for which costs were taxed and so, there is not, and there cannot be, a dispute as to retainer.
12. 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.
13. To date the Certificate of Taxation dated 23rd June, 2022 has not been set aside or altered. In the circumstances, there is no reason to deny the Advocate judgment as sought.
14. 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.”
15. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs.
16. 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.”

17. In the instant matter, there is evidence that the bill of costs in this matter was served on the Respondent via email on 10th September, 2021 and I therefore find that thirty (30) days from the service of the bill to the client expired on 10th October, 2021.
18. The upshot of this is that the notice of motion dated 5th July,2022 succeeds and is allowed in the following terms:
 - a. Judgment is hereby entered for the advocate against the Respondent for Ksh.100,027.50/= pursuant to the Certificate of Taxation dated 23rd June, 2022.
 - b. Interest shall accrue on the taxed costs at 14% per annum from 10.10.2021 until payment in full.
 - c. The Applicant is at liberty to execute against the Respondent.
 - d. I also award costs of this application to the Applicant.
19. 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

Ms Kiumbuku for applicant

N/A for respondent

