



Muri Mwaniki & Wamiti Advocates v Gateway Insurance Company Ltd (Miscellaneous Civil Application 78 of 2015) [2023] KEHC 24422 (KLR) (30 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION 78 OF 2015
HM NYAGA, J
OCTOBER 30, 2023**

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

GATEWAY INSURANCE COMPANY LTD RESPONDENT

RULING

1. Before me is a Notice of Motion dated 6th September, 2022 brought under Section 51 (2) of the Advocates Act, Paragraph 7 of the Advocates (Remuneration) Order and order 51 rule 1 of the Civil Procedure Rules, 2010 in which the Applicant seeks for Orders that: -
 - i. Judgement be entered for the Applicant against the Respondent for the sum of Kenya Shillings Two Hundred and Eighty-Four thousand, fifty-eight shillings and sixty-four cents (Ksh. 284,058.64/=) in costs certified herein by the Deputy Registrar on 6th March, 2020.
 - ii. The said sum of Ksh. 284,058.64/= in costs be paid with interest at the rate of 14% per annum from 22nd June, 2015 being the date one (1) month after the service of the bill of costs on the Respondent, until payment in full pursuant to paragraph 7 of the Advocates (Remuneration) Order, 2009.
 - iii. The costs of this application be awarded to be awarded to the Applicant/Advocate.
2. The Application is premised on grounds inter alia that: -
 - i. The Deputy Registrar taxed the Applicant/Advocate's costs at Ksh. 284,058.64/= and the same has been certified per the certificate of taxation dated 17th September 2021.
 - ii. The Applicant/Advocate are entitled to interest on the said taxed costs at the rate of 14% per annum from 22nd June 2015, being one (1) month after the service of the bill of costs to the



Respondent, until payment in full pursuant to paragraph 7 of the Advocates (Remuneration) Order, 2009.

- iii. The Respondent/Client is yet to settle the said amount and the Applicant/Advocate would wish to commence execution proceedings against him.
- iv. The retainer is not in dispute.
3. The Application is supported by an affidavit of Martin G. Mwaniki, an Advocate of the High Court of Kenya sworn on even date. He deposes that the Applicant acted for the Respondent in Nakuru CMCC No. 1227 of 2008 between James Thumari Ndirangu vs Simon Njuguna Mwaura & William Kingi Mukuna until completion. Thereafter, the Applicant made demand to the Respondent for payment of their fees but demands elicited no response prompting the Applicant to file the Bill of Costs dated 30th March, 2015 which was taxed at Kshs. 284,058.64/= on 6th March, 2020.
4. He avers that the said costs have not been paid by the Respondent to date and that the Applicant forwarded the certificate of taxation by a letter dated 19th August, 2022.
5. He avers that the certificate of costs has not been set aside or altered by the Respondent.
6. He contends that the Applicant would wish to commence execution proceedings against the Respondent/Client and the same can only be done once the taxed costs have been endorsed as the judgement of this Honourable Court and the Applicant has obtained a decree to that effect.
7. The respondent opposed the application through the grounds of opposition dated 16th June, 2022.
8. The grounds of opposition are that:
 - i. The application is a total abuse of the court process.
 - ii. The certificate of costs was settled way back on 7th October, 2022.
 - iii. Application has been overtaken by subsequent developments in the matter and the same is therefore moot in the circumstances.
 - iv. The interest is at the discretion of courts and in any event, the issue of interest is moot at this point in time since the certificate of costs was already settled on 7th October, 2022.
 - v. Costs payable to the Applicant was certified on 6th March, 2020 and that is the time costs became due and interest if at all can only be calculated as from that date and the attempt by the applicant to relate interest back to the year 2015 is just but an attempt at unjust enrichment.
 - vi. The Application by the Applicant is aimed at reopening litigation on a matter which is no longer alive before this Honourable Court since the certificate of costs was already settled by the respondent long before the present application.
9. The parties thereafter agreed to canvass the Application by way of written submissions.
10. The Applicant's submissions were filed on 17th July, 2023 whereas the Respondent's submissions were filed on 20th July, 2023.

Applicant's Submissions

11. On whether the Applicant/Advocate is entitled to interest on the taxed costs, the applicant prayed for interest to be paid at 14 % per annum on the paid sums from 22nd June, 2015, being one month after



the date of delivery of the bill to the Respondent until 7th October,2022 when the payment of the taxed sum was made.

12. The applicant submitted that the court in *Otieno Ragot & Company Advocates vs National Bank of Kenya* [2022] eKLR adopted the position enunciated in Rule 7 of the *Advocates (Remuneration) Order*.
13. The applicant argued that the bill of costs was served upon the Respondent on 22nd May,2015 and one month envisaged in Rule 7 of the Advocates Remuneration Order lapsed on 22nd June, 2015 and as such the interest on the certified costs would accrue from 22nd June,2015 to 7th October,2022 when the respondent settled the taxed costs. He relied on the case of *Waiganjo Wachira & Company Advocates vs Pacis Insurance Company Limited* [2019] eKLR where the court cited to the case of *Kitibi & Company Advocates vs Menengai Downs Ltd* [2015] eKLR . In the latter case, the court stated that once judgement is entered on a certificate of costs the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. It was also held that for an advocate to be able to recover this there must be evidence on record of the date when the bill was served upon the client.
14. According to the Applicant, interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full. In support of this proposition reliance was placed on the case of *Njeri Onyango & Co. Advocates vs Ufundi Co-operative Society* [2016] eKLR.
15. In regards to the contention by the respondent that the applicant's claim is moot, the applicant submitted that the same is immaterial for reason that it is clear that the taxed amount was yet to be tendered in full by 8th September, 2022 when the application herein was filed hence the claim for payment of interests at 14% per annum as raised in the present application.
16. The applicant urged the court to allow the Application.

Respondent's Submissions

17. The respondent submitted that the Applicant's bill of costs dated 30th March,2015 does not disclose any claim for interest on disbursement and costs by the Applicant/Advocate and as such Rule 7 of the advocates Remuneration Order ,2009 cannot avail to the advocate.
18. In buttressing its submissions, the respondent relied on the Court of Appeal decision in *Otieno Ragot & Co. Advocates vs Kenya Airports Authority* (2021) eKLR, in which the court held inter alia that;

“The element of interest defined by rule 7 ought to have been included in the Bill of Costs and an omission would negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the *Civil Procedure Act*.”
19. For the foregoing reasons, the Respondent urged this court to dismiss the application with costs.

Analysis & Determination

20. The only issue for determination in my view is whether the Applicant is entitled to interest on taxed costs at 14% per annum from the 22nd June, 2015 to 7th October,2022 as prayed or at all.
21. Rule 7 of the Advocates Remuneration Order provides as follows:

“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.”

22. Thus, a plain reading of the above rule is to the effect that the rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs or fee note.

23. I am also guided by the Court of Appeal decision in *Otieno Ragot & Co. Advocates vs Kenya Airports Authority* (supra) 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.”

24. The court went further to consider the claim of interest after taxation of an Advocate -client bill of costs and held that: -

“Additionally, it is distinctive that a review of the applicant’s Bill of Costs does not disclose that the applicant included a charge for “interest at 14% per annum on his (her) disbursements and costs...” in the Bill of Costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure”.

25. Section 26 of the Civil Procedure Rules provides as follows:

(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

26. I have looked at the Bill of Costs dated 30th March,2015 by the Applicant. The Applicant did not include a charge for interest at 14% per annum in the bill of costs. Accordingly guided by the above precedents, the Applicant is not entitled to interest from 22nd June,2015 as claimed in the application as a result of the omission to include the charge of interest at 14% per annum in the bill of costs.

27. The Applicant in its Supporting Affidavit averred that aforementioned bill of costs which was annexed and marked as “MGM 4” was received by the respondent on 22nd May,2015 evidenced by its stamp in receipt. I have perused the said annexure and there is no evidence of such receipt. The certificate of costs was however received by the respondent on 22nd August,2022 as evidenced by the annexure marked “MGM 3”.

28. The Applicant, in its submissions, acknowledged that the taxed amount of Ksh. 284,058.64 was paid by the Respondent on 7th October,2022. This was after the costs were certified and this application was



filed. Specifically, the application was filed on 6th September 2022, just a month before the payment. The payment would be deemed to be an admission by the respondent of the sum owed to the applicant as per the certificate of costs.

29. I therefore find that although the applicant received the payment, this was after they had filed the present application. As such they are entitled to the order for judgment to be entered in terms of the certificate of costs. I enter the same, but note that the certified costs were duly paid after the filing of the application.
30. I have already dealt with the claim for interest as set out in the application.
31. In my view, upon entry of the judgment, the applicant is only entitled to interest on the taxed costs from the date of filing the application, to the date of judgment and thereafter if the same remains unpaid. In this instance the amount was paid one month after the application was filed. Therefore, any interest would have only accrued for that period of one month. That is the only amount due and payable. It is so ordered.
32. Although the respondent paid the amount set out in the certificate of costs, it was done after the applicant had already filed the application. As such I find that the applicant is entitled to costs thereon.
33. Since the applicant was only partly successful, it shall have half the costs of the application.
34. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF OCTOBER, 2023.

H. M. NYAGA,

JUDGE.

In the presence of;

C/A Jeniffer

Mr. Akango for Respondent

N/A for Applicant

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