



**Otieno v Oduol (Miscellaneous Civil Application 42 of 2019)  
[2023] KEHC 26110 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION 42 OF 2019  
RE ABURILI, J  
NOVEMBER 27, 2023**

**IN THE MATTER OF AN APPLICATION TO TAX AN ADVOCATE BILL  
OF COSTS ON THE BASIS OF ADVOCATE-CLIENT BILL OF COSTS  
ODHIAMBO OWITI & COMPANY ADVOCATES (ADVOCATE/APPLICANT)  
VERSUS  
EMMANUEL OTIENO (CLIENT/RESPONDENT)**

**BETWEEN**

**EMMANUEL OTIENO ..... PLAINTIFF**

**AND**

**DENNUS ODUOL ..... DEFENDANT**

*(Arising from the professional services rendered by the Applicant  
for the Respondent in the original Kisumu CMCC No. 394 of 2014)*

**RULING**

1. This Ruling determines the Advocate/Applicant's Notice of Motion dated 27<sup>th</sup> July 2022 and filed in court on 28<sup>th</sup> July 2022, against the Client/Respondent.
2. The advocate brings the application under the provisions of Section 51 (2) of the *Advocate Act*, Cap 16 Laws of Kenya seeking for orders:
  1. That the Certificate of Costs dated 5<sup>th</sup> May 2022 and issued on 31<sup>st</sup> May 2022 be adopted as the judgment and decree of this court and judgment be accordingly entered for the Advocate against the Client in the sum of Kshs.191,426.00 with interest at 14% per annum from 9<sup>th</sup> May 2019 until payment in full.



2. That costs of these proceedings be borne by the Client/Respondent.
3. The application is predicated on several grounds laying the basis for the prayers sought and supported by the affidavit sworn by Kennedy Owiti Advocate on 27<sup>th</sup> July 2022.
4. The Applicant's case is that the firm of Odhiambo Owiti & Company Advocates of which he was then the sole proprietor, was retained by the Respondent/Client before the said firm merged with Otieno Ragot & Company Advocated to become Owiti, Otieno & Ragot Advocates, to institute suit namely Kisumu CMCC No. 394 of 2014 between the Respondent herein Emmanuel Otieno against one Dennis Oduol.
5. That the suit was filed and the Respondent Client paid some deposit towards professional fees and a plaint was filed and suit prosecuted to its logical conclusion but that the client failed to settle professional fees which prompted the applicant to draw and serve the Respondent Client bill of costs dated 28<sup>th</sup> March 2019, which bill was later taxed on 5<sup>th</sup> May 2022 as per the annexed amended certificate of taxation issued on 31<sup>st</sup> May 2022 for Kshs.191,426.00.
6. It is the Applicant's averment that the said certificate of costs has neither been set aside nor a reference filed or pending hence this application.
7. The Applicant therefore prays that having served the itemized bill of costs upon the client, he is entitled to interest at 14% per annum from 9<sup>th</sup> May 2019, which was thirty (30) days from the date of presentation of the said bill of costs to the Respondent, as stipulated in rule 7 of the [Advocates Remuneration Order](#).
8. He therefore seeks for adoption of the said certificate of costs as judgment of this court and decree drawn to enable enforcement for recovery of the said bill of costs as taxed by the taxing master.
9. Opposing the application, the Respondent/Client filed grounds of opposition dated 7<sup>th</sup> September 2022 on 8<sup>th</sup> September 2022 contending that the application dated 27<sup>th</sup> July 2022 is misconceived, frivolous and vexatious in law; that the court is *functus officio* and cannot grant the orders sought; that the advocate/applicant has failed to give credit for all the sums paid as legal fees and part proceeds of judgment paid to the firm; that the application is made in bad faith and is not deserving in equity or law; that costs assessed were excessive in the circumstances and not taxed to scale as per the provisions of the [Advocates Remuneration Act](#) (*sic*); that interest as sought is misplaced and not provided for in law and that the Applicant is guilty of laches.
10. The application was argued orally on 30<sup>th</sup> October 2023 with Ms. Winnie Anuro holding brief for Ms. Oduor Advocate for the Applicant and Mr. Mwesigwa holding brief for Mr. Charles Onyango Advocate for the Respondent.
11. Initially, parties had sought for canvassing of the application by way of written submissions but only the applicant complied on 15<sup>th</sup> February 2023 and relied on the pleadings filed at the oral hearing.
12. The Applicant's counsel wholly relied on the grounds and the supporting affidavit and submitted that initially, a reference was filed challenging the original taxation and vide ruling of 18<sup>th</sup> May 2021, the court ordered for fresh taxation which was done and an amended certificate of costs dated 5<sup>th</sup> May 2022 was issued hence this application.
13. In the written submissions dated 13<sup>th</sup> February 2023 and filed on 13<sup>th</sup> February 2023, counsel for the applicant retraced the history of the matter wherein the Applicant filed a bill of costs vide an application dated 17<sup>th</sup> June 2019 on 4<sup>th</sup> July 2019 for taxation, which bill of costs was taxed at Kshs.307,890



- and the Respondent being aggrieved by the ruling on taxation, filed a reference which was heard and determined vide a ruling of 18<sup>th</sup> May 2021 before Justice F. A. Ochieng.
14. In the said Ruling, the learned Judge allowed the reference, set aside the ruling on taxation dated 13<sup>th</sup> June 2019 and ordered that the Advocate/Client Bill of costs be taxed afresh, by a taxing officer other than Hon. A. Odawo who had initially taxed the bill of costs.
  15. That ruling was complied with and the bill of costs dated 28<sup>th</sup> March 2019 was re taxed and a ruling was delivered on 5<sup>th</sup> May 2022. It is out of that Ruling on taxation that the Certificate of Costs was issued on 31<sup>st</sup> May 2022.
  16. So far, I have not seen any Reference filed to challenge that certificate of taxation and neither is there any dispute as to the retainer of the advocate by the Client/Respondent.
  17. It follows that the question of this court being *functus officio* does not arise as contended by the Respondent in his grounds of opposition.
  18. Similarly, the question of the Bill of Costs as taxed not being to scale, or that it is excessive in the circumstances, or that the advocate failed to give credit to the sums paid to him as legal fees and part proceeds of judgment paid to his firm does not arise since those are issues which could only be canvassed in a reference, had the Respondent filed one, pursuant to rule 11 of the [Advocates Remuneration Order](#).
  19. Further, the contention that the application is misconceived, frivolous and vexatious in law is not supported by any material as the law under Section 51 (2) of the [Advocates Act](#) provides that where there is no dispute as to retainer and there is no pending reference, the only way the court can give effect to a certificate of taxation or certificate of costs in Advocate/Client bill of costs is by way of an application for entry of judgment in terms of the Certificate of Costs which has not been set aside and a decree drawn. The filing of this application is sanctioned by the law hence it cannot be a misconceived, frivolous or vexatious application. That ground number one of the opposition is therefore misconceived and is overruled as well.
  20. On the contention that the application is made in bad faith and is bad in law, this court has not been told how a process allowed by the law as stated above can turn out to be complied with in bad faith or not deserving in equity or in law. The ground of opposition is therefore in itself misconceived.
  21. On whether the interest sought is misplaced and not provided for in law, again there was no elaboration on this ground. However, Rule 7 of the [Advocates Remuneration Order](#) makes provision for charging of interest at 14% per annum where such interest is raised before the bill has been settled or tendered in full, and the bill was served on the client one (1) month before presentation of the said bill to court for assessment.
  22. The Rule stipulates that:

“ 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, provided such claim for interest is raised before the amount of the bill has been paid or tendered in full.”
  23. In this case, what the advocate was expected to do was to adduce evidence that he drew an itemized bill of costs and served it upon the client with a demand for settlement and that in that demand or bill, he asked for interest at 14% per annum.



24. I have perused the documents filed in this court. I have not seen any bill of costs or demand made to the Respondent before the same was filed into court for taxation. The applicant submits that the bill of costs dated 27<sup>th</sup> July 2022 was served on the Respondent on 9<sup>th</sup> April 2022.
25. However, annexure KO2 referred to in the Applicant's submissions is the bill of costs dated 28<sup>th</sup> March 2019 as filed into court on the same day and there is nothing annexed to show that the bill was served before presentation into court for taxation on 28<sup>th</sup> March 2019. Even the taxation notice served on 9<sup>th</sup> April 2019 refers to the Bill of Costs that had already been filed into court on 28<sup>th</sup> March 2019.
26. I have also perused the said bill of costs and I find no item seeking for interest at 14% per annum on disbursement and costs. It is for that reason that I agree with the Respondent's contention that the interest sought from the period stated at 14% per annum is not justified and is declined. Instead, I order that the interest shall only be due at 14% per annum from 5<sup>th</sup> May 2022 the date of taxation of the bill of costs until payment in full.
27. On whether the applicant is entitled to the costs of this application, costs are in the discretion of the court and whereas the applicant would be entitled to costs of his successful litigation, I observe that this matter has dragged on for a while and to award further costs would escalate the dispute to oscillate in court all the time.
28. The Respondent was awarded costs of the Reference. Instead of both parties filing fresh bills of costs for consideration by this court, I order that each party bear their own cost of the application dated 27<sup>th</sup> July 2022.
29. In the end, I allow the application dated 27<sup>th</sup> July 2022 in the following terms:-
1. Judgment be and is hereby entered for the Applicant/Advocate against the Respondent/Client in terms of certificate of costs dated 5<sup>th</sup> May 2022 issued on 31<sup>st</sup> May 2022 in the sum of Kshs.191,426.00 together with interest thereon at 14% per annum from 5<sup>th</sup> May 2022 the date of taxation until payment in full.
  2. Each party to bear their own costs of the application dated 27<sup>th</sup> July 2022
  3. Decree to issue forthwith.
  4. Mention before the Deputy Registrar on 22<sup>nd</sup> January 2024 to confirm settlement of the decree and for closure of this file.
30. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2023**

**R. E. ABURILI**

**JUDGE**

