



Kinyanjui Njuguna & Co Advocates v Invescor Assurance Company Ltd (Miscellaneous Application 268 of 2019) [2023] KEHC 27435 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEHC 27435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION 268 OF 2019
DO CHEPKWONY, J
NOVEMBER 23, 2023**

BETWEEN

KINYANJUI NJUGUNA & CO ADVOCATES APPLICANT

AND

INVECOR ASSURANCE COMPANY LTD RESPONDENT

RULING

1. What is before the court for determination is the Notice of Motion application dated 28th October, 2021, wherein the Applicant is seeking the following orders:-
 - a. That this Honourable Court be pleased to enter Judgment in favour of the Applicant herein in terms of Certificate of Taxation dated 12th October, 2021 in the sum of Kshs.341,197/= (Three Hundred and Fourty One Thousand, One Hundred and Ninety Seven).
 - b. That pursuant to Prayer No.(a) above, the Honourable Court be pleased to enter Judgment/ Decree for Kshs.341,197/=.
 - c. That interest be provided for at 14% per annum from 7th May, 2017 until payment in full.
 - d. That the costs of the application be awarded to the Applicant.
2. The Applicant is based on the grounds set out in the Supporting Affidavit of Kinyanjui Theuri sworn on 26^h October, 2021 as follows:-
 - a. That the Applicant's Bill of Costs in the above captioned matters have since been taxed.
 - b. That pursuant to Paragraph No.(a) herein Certificates of Taxation have since been drawn and issued.
 - c. That the Respondent has continually neglected and/or failed to pay legal fees duly earned despite demand and notice by the Applicant.



- d. That the Respondent is facing a liquidity crisis and the recovery of funds is in jeopardy.
 - e. That the instant application is necessitated by the fact, the financial liquidity of the Respondent is unknown vis a vis in question.
 - f. That an advocate is legally entitled to fees earned in the course of service in line with the Advocates Remuneration Order.
 - g. That the Respondent does not dispute the fees.
 - h. That the instant application is made in the sole interest of justice and in due realisation of legal fees earned by the Applicant.
 - i. That if the court fails to grant the orders sought herein, the Applicant is likely to suffer gross prejudice.
 - j. That the Applicant is entitled to the Judgment/Decree/ interest.
3. The court has considered the application and notes that on 14th February, 2020, the Deputy Registrar allowed the Bill of Costs dated 22nd October, 2020 which was unopposed as prayed. A Certificate of Taxation was then issued on 12th October, 2021 in the sum of Kshs.341,197/=.
 4. It is trite law that once a Certificate of Taxation is issued, the same is final and unless it is set aside or altered by the court, the court is required to enter Judgment for the amount certified. This was the position in the case of *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co. Ltd* [2021]eKLR, wherein the court held that:-

“The Certificate of Costs provides the basis for exercise of Jurisdiction by the court to enter Judgment for the taxed costs in accordance with Section 51(2) of the *Advocates Act* below:-

“The Certificate of Taxing Officer by whom it 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”.
 5. This position was also restated by the court in the case of *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014]eKLR, as follows:-

“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. The Certificate of Costs is final as to the amounts of the costs and the court would be quite in order to enter Judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November, 2012”.
 6. In this case, since there is no application seeking to set aside or alter the ruling of the Deputy Registrar or the Certificate of Taxation, the court proceeds to allow the Notice of Motion application dated 28th October, 2021.



7. On the issue of interest, the Applicant seeks to be awarded interest from the date of 7th February, 2020 which is the date that it served the fee note to its Client. Paragraph 7 of the [Advocates \(Remuneration\) Order](#) 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”.

8. In this case, the Bill of Costs dated 22nd October, 2020 was served upon the Client on 3rd August, 2020, and therefore, interest should be calculated thirty (30) days after that day which is 3rd September, 2020. In the circumstances, interest is awarded at 14% from 3rd September, 2020 until payment in full.

9. In the resultant, the Notice of Motion application dated 28th October, 2021, is hereby allowed in the following terms:-

a. Judgment be and is hereby entered in the sum of Kshs.341,197/= together with interest at 14% which shall be calculated from 4th January, 2021 until payment in full.

b. The Applicant is also awarded costs of the application.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF NOVEMBER , 2023.

D. O. CHEPKWONY

JUDGE

