



Ouma Maurice Otieno t/a O.M. Otieno & Co. Advocates v African Merchant Assurance Company Limited (Miscellaneous Civil Application E039 of 2022) [2023] KEHC 26791 (KLR) (19 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26791 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CIVIL APPLICATION E039 OF 2022
TA ODERA, J
DECEMBER 19, 2023**

BETWEEN

**OUMA MAURICE OTIENO T/A O.M. OTIENO & CO.
ADVOCATES ADVOCATE**

AND

AFRICAN MERCHANT ASSURANCE COMPANY LIMITED CLIENT

RULING

1. By a Notice of Motion dated 10th November 2022 and filed through the firm of O.M. Otieno & Company Advocates and under Sections 51(2) of the Advocates' Act, Cap 16 of the Laws of Kenya, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and Rule 7 of the *Advocates Remuneration Order*, the Appellant/Applicant herein seeks the following orders: -
 1. The Honourable Court be pleased to have the Certificate of Costs in respect of the taxation order made on the 14th day of April 2022 for the sum of Kenya Shillings Three Hundred Thousand Four Hundred and Nineteen and Two Hundredths (KShs. 300,419.02/=) adopted as Judgment and decree of this court.
 2. Consequent to prayer (1) hereinabove the Court be pleased to charge interest on the taxed amount at the rate of 14% per annum from the date of service of the bill of costs, that is from the 18th day of January 2022, until payment in full.
 3. Costs of this application be borne by the Respondent/Client.
 4. Such further and/or other orders be made as the court may deem fit and expedient.



2. The grounds on the face of the application are that the Client/Respondent instructed the Advocate to act on its behalf in Kisii CMCC No. 52 of 2015 Maurine Moraa Nyamwaka vs Victoria Kemunto & Another. The Advocate acted for the Client and the professional fees disbursed to the client for settlement. A Taxation Notice dated 10.12.2021 and 17.1.2022 were served upon the Client on 18.1.2022 by courier and a return of service filed in Court. The Bill of Costs was taxed on 14.4.2022 in the sum of KShs.300,419.02/=. The Advocate was entitled to interest on cost and disbursement at the rate of 14% per annum in line with Rule 7 of the Amended Advocates Remuneration Order. The Certificate of Costs was unchallenged but remained unpaid.
3. The Application was supported by an Affidavit sworn by Ouma Maurice Otieno on 10.11.2022. He deponed that the Client instructed the firm to act for them in Kisii CMCC No. 57 of 2015 Maureen Moraa Nyamwaka v Victoria Kemunto & Another. The firm acted and forwarded its professional fees for settlement by the Client. He attached an affidavit of service indicating that the Taxation Notice dated 10.12.2021 and 17.1.2022 were served upon the Client on 18.1.2022 via courier. The Bill of Costs was taxed on 14.4.2022 in the sum of KShs.300,419.02/=. He deponed that the Advocate was entitled to interest at the rate of 14% per annum since the date of filing the bill of costs as per Rule 7 of the Amended *Advocates Remuneration Order*. The certificate of costs was unchallenged and unaltered as a consequence of review or such other action by the Court.

Submissions.

4. The Applicant/Advocate filed its submissions dated 23.11.2022.
5. The Advocate cited Section 51(2) of the *Advocates Act* which provides that the certificate of the taxing officer, unless set aside, is final as to the amounts of costs covered. The Respondent did not challenge the certificate of taxation. The Advocate cited the case of *Otieno, Ragot & Company Advocates vs Kenya Airports Authority [2021]* eKLR where the Court of Appeal cited the case of *Lubulellah & Associates Advocates vs N.K. Brothers Limited [2014]* eKLR where the Court held that once a certificate of costs was issued and there was no reference in opposition and the certificate of costs had not been set aside, the next action was entry of judgment by the court.
6. They also relied on Rule 7 of the *Advocates (Remuneration) Order* which provides for interest at the rate of 14% per annum from the expiration of one month from the delivery of his bill to the client. They submitted that interest would then be calculated as from 18.1.2022.
7. They cited the decision of *Amondi & Co. Advocates v County Government of Kisumu [2022]* eKLR, the court held that Rule 7 of the *Advocates Remuneration* provided for interest at the rate of 14% per annum from the expiration of one month from the delivery of the bill to the client. They urged the Court to allow the application as sought.

Determination

8. I have considered the Application and the Advocates' Submissions. Notably, despite service, the Respondent did not file any opposition to the Application.
9. I am required to first satisfy myself that the taxation was conducted well and that there is no valid challenge to the Certificate of Taxation. See par. 36 *Re Estate of Eliud Timothy Mwamunga [2020]* eKLR
10. Looking at the Court's record, I find that on the face of it, the taxation was conducted appropriately.



11. I am in agreement with the Advocate’s submissions and I am persuaded with the finding in the case of *Lubullelah & Associates Advocated v N.K. Brothers Limited* [2014] eKLR, where the Court held 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. 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.”

12. Section 51(2) of the *Advocates Act*, Cap 16 of the Laws of Kenya provides as follows:

51. General provisions as to taxation

- (1) Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
- (2) 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. A cursory look at the Court’s record reveals that there is no application, pending or determined, as regards setting aside the certificate of taxation.

14. Rule 7 of the *Advocates’ Remuneration Order* provides as follows:

7. Interest may be charged

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.

15. I note that the Applicant prays for interest on the bill of costs. The law provides that the interest will be charged on the advocate’s disbursements and costs.

16. I am persuaded by the decision in the case of *Lubullelah & Associates Advocates v NK Brothers Limited* [2014] eKLR, where the Court held “...if an advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the *Advocates Remuneration Order*. The court can only award the interest at court rates.”

17. In the circumstances, I am inclined to allow the Application dated 10.11.2022 in the following terms:

1. Prayers 1 and 3 are allowed as prayed.



2. With regard to Prayer 2, interest shall be charged on the disbursement and costs and at court rates from the date of taxation until payment in full.

DATED, DELIVERED AND SIGNED AT KISII THIS 19TH DAY OF DECEMBER 2023.

TERESA ODERA

JUDGE

In the presence of:

Mr. Opondo for the Applicant

N/A for the Respondent

Kerubo: Court Assistant

