



Otieno Ragot & Co. Advocates v County Government Of Kisumu (Miscellaneous Civil Application 343 of 2015) [2022] KEHC 578 (KLR) (31 May 2022) (Ruling)

Neutral citation: [2022] KEHC 578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION 343 OF 2015
FA OCHIENG, J
MAY 31, 2022**

BETWEEN

OTIENO RAGOT & CO. ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF KISUMU RESPONDENT

RULING

The Advocate/Applicant has moved the Court pursuant to the provisions of section 51 of the [Advocates Act](#). They seek the adoption of the Certificate of Costs as a Judgment of the Court.

1. Secondly, the Applicant asked the Court to award interest on the taxed costs at the rate of 14% per annum from 15th January 2016 until payment in full.
2. The Client/Respondent does not challenge the prayer for the adoption of the Certificate of Costs as a Judgment of the Court.
3. However, the Respondent submitted that the Applicant was not entitled to interest at 14% per annum from 15th January 2016.
4. As far as the Respondent was concerned, if the Applicant had wanted to make a claim for Interest, they could have made it on the face of the Bill of Costs.
5. The relevant provision on the issue of interest is Rule 7 of the Advocates Remuneration Order, which reads 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.”



6. A plain reading of that rule indicates that it does not lay down a requirement that the claim for interest be made either in the fee note or in the Bill of Costs.
7. If anything, the rule says that the advocate can put forward the claim for interest at any time, provided that the client will not yet have paid or tendered the amount in the bill.
8. To my mind, the wording of the rule is so clear that it does not require any indepth analysis or interpretation.
9. My consistent reasoning on the issue of interest remains that the client is allowed a grace period of one month, when the bill or the taxed costs does not attract interest.
10. If the fee note is challenged by the client, and is thereafter taxed, I hold the view that the one month grace period would run from the date of the Ruling on taxation.
11. However, if the taxing officer did award the exact same sum as the advocate had cited in his fee note, that would mean that the client was wrong when he challenged the fee note.
12. Similarly, if the bill of costs was taxed at a sum which was higher than in the fee note, then the client would have been wrong to challenge the fee note.
13. In instances where the taxed costs were either the same or higher than the amount asked for in the fee note, the interest ought to be calculable from the expiration of one month from the date when the fee note was delivered to the client.
14. But the interest is only claimable if the advocate has asked for it.
15. Therefore, if the advocate is seeking interest on the fee note, and the said fee note does not incorporate a claim for interest, I hold the considered view that the advocate would not automatically become entitled to interest.
16. The advocate would, in those circumstances, have to make a separate claim for interest; and such claim may only be sustainable if it is made before the fee has been paid.
17. On the other hand if the advocate's bill of costs was taxed, so that his claim is based upon the Certificate of Costs (or Certificate of Taxation), the advocate cannot be entitled to interest automatically, if he had cited a claim for interest in his bill of costs.
18. In the circumstances, the advocate would be obliged to raise a claim for interest; and he would have to do so before the taxed costs are either settled or tendered in full.
19. In this case, the Client has not demonstrated to the Court that it has either settled or tendered the taxed costs, in full. Therefore, I find that the Advocate/Applicant is entitled to raise a claim for interest.
20. I do now award interest on the taxed costs, at the rate of 14% per annum.
21. The interest will be calculable from the expiration of 30 days from 24th May 2021, when the Certificate of Costs was delivered to the Client. I so hold because, although the ruling on taxation was delivered on 24th August 2017, the Client/Respondent was absent from Court, on that date.
22. In the result, Judgment is entered in favour of the Advocate/
Applicant for Kshs 130,753.16 plus interest at 14% per annum from 24th June 2021, until payment in full.
23. The Client/Respondent is further ordered to pay the costs of the application dated 6th August 2021.



DATED, SIGNED and DELIVERED at KISUMU This 31st day of May 2022

FRED A. OCHIENG

JUDGE

