



**Otieno, Ragot & Co. Advocates v British American Insurance Co. Ltd (Miscellaneous Civil Application 34 of 2019) [2022] KEHC 10387 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10387 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CIVIL APPLICATION 34 OF 2019**

**SN RIECHI, J**

**JUNE 30, 2022**

**BETWEEN**

**OTIENO, RAGOT & CO. ADVOCATES ..... APPLICANT**

**AND**

**BRITISH AMERICAN INSURANCE CO. LTD ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the applicant's Notice of Motion dated September 20, 2019 seeking the following reliefs;-
  1. The honourable court be pleased to adopt the Certificate of Costs issued herein in relation to the Advocate/applicant's Bill of Costs dated 8/3/2019, in the sum of Kshs 164,023/= as the judgement and decree of this honourable court.
  2. That the advocate/applicant be awarded interest on the taxed costs at court rates from 9/8/2019 until payment in full.
  3. Costs of the application and the taxation process be borne by the respondent.
2. The application is supported by the affidavit of Faustine Osewe, counsel sworn on even date and depones that the firm was instructed by the respondent to defend them in court and thereafter presented their invoice to the respondent who has failed to pay the legal fees.
3. Upon failure by the respondent to settle the bill, the applicant filed an advocate-client bill of costs which was taxed on 9/8/2019 at the sum of Kshs 164, 023/= and a certificate of costs issued in those terms. The respondent has not taken steps to have the bill set aside which therefore stands to date and unless adopted as a judgement of this court and a decree issued, the applicant cannot enforce.
4. The respondent filed a replying affidavit sworn by Hope Wambugu, the respondent's principal legal associate who depones that the applicant was indeed instructed to defend the respondent and was paid.



A payment remittance advice has been exhibited to the affidavit showing a transaction of Kshs 115,602.50/= in favour of the applicant was made on 19/4/2018.

5. In a further affidavit sworn on 19/2/2022, the applicant disputes the payment as being in relation to the bill of costs in question. Counsel depones that the firm handles several matters on behalf of the respondent and there was no difficulty in the respondent indicating the payment was in relation to the bill. That the payment made on 19/4/2018 was in respect of other matters the firm handles for the respondent.
6. By directions of the court, the application was disposed of by way of written submissions. The same are on record and have been considered.
7. Upon perusal of the application, the replies thereto, the submissions and the authorities cited together with the law on the issue, the issue commending itself for determination is whether the applicant is entitled to the orders sought.
8. It is not disputed that the respondent instructed the applicant to defend it in a matter that has since been concluded. The applicant duly represented the respondent and at the end, presented their itemized bill of costs which was not settled and the applicant filed their bill of costs which was assessed at Kshs 164,023/= and a certificate of costs issued by the Taxing Master of this court.
9. Section 51(2) of the *Advocates Act*, Cap 16, provides as follows regarding the settlement of an advocate's taxed bill of cost;
  - (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.
10. In the instant application, instructions notes have been exhibited and the issue of retainer is not in dispute. In *Ochieng, Onyango, Kibet & Another v Adopt a Light Limited* (2007) eKLR
  - Section 51(2) of the *Advocates Act* gives an Advocate the opportunity to benefit from the discretionary powers of the court where he has satisfied the requirement and precedent conditions set out in that section. In my view an Advocate who has passed the hurdle provided under Section 51(2) is automatically entitled to judgment. In this case the certificate of costs obtained by the applicant is final since the respondent was unsuccessful in its challenge to set aside or vary the amount contained in the said certificate. Secondly there is no dispute as to retainer, therefore in my judgement, the applicant has fulfilled the conditions set out under section 51(2) of the *Advocates Act*, hence it is incumbent upon this court to do the necessary.
11. In the instance of this application, the certificate of costs has not been set aside and is therefore incumbent upon the respondent to settle the bill. The contention that the respondent has already paid the bill in respect of the matter subject of the bill of costs is not supported. I find the applicant's explanation that the sum was in respect of another matter handled by the applicant plausible.
12. I therefore find that that the applicant has advanced sufficient reasons to be granted the orders sought. The Bill as contained in the Taxing Master's certificate is hereby adopted as judgment of this court.

On whether interest is chargeable on the bill, Rule 7 of the *Advocates Remuneration Order* states;

An advocate may charge interest at 14% per annum on his disbursements and cost, 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 it raised before the amount of the bill has been paid or tendered in full.

13. Having found that the applicant is entitled to judgement on the bill, Rule 7 of the [Advocates Remuneration Order](#) provides for payment of interest from the date of taxation, that is, August 9, 2019.
14. In the end result, I hereby allow the application as prayed with costs to the applicant.

**DATED at BUNGOMA this 30<sup>th</sup> day of June, 2022**

**S.N. RIECHI**

**JUDGE**

