



REPUBLIC OF KENYA



Omwenga t/a Omwenga & Co. Advocates v Monarch Insurance Co. Ltd (Miscellaneous Civil Application E022 of 2021) [2022] KEHC 10220 (KLR) (28 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MISCELLANEOUS CIVIL APPLICATION E022 OF 2021**

RPV WENDOH, J

JUNE 28, 2022

BETWEEN

DUKE O. OMWENGA T/A OMWENGA & CO. ADVOCATES APPLICANT

AND

MONARCH INSURANCE CO. LTD RESPONDENT

RULING

1. This ruling relates to the Notice of Motion Application dated 11/2/2022, brought under the provisions of Section 51 (2) of the *Advocates Act*, Cap 16, Sections 1A, 1B, 3A and 27 (2) of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010.
2. The applicant, Duke O. Omwenga t/a Omwenga & Co. Advocates is seeking the following orders: -
 1. The court be pleased to enter judgment for a sum of Kshs. 235,200/= as per the certificate of taxation issued on 10/2/2022 by the Deputy Registrar.
 2. That the court do award interest of 14% per annum as from 12/8/2022 being the date when the bill of costs dated 18/5/2021 was assessed by the taxing master until payment in full.
 3. Upon entry of judgement, the court do issue a decree for the sum of Kshs. 235,200/= plus the accrued interest.
 4. Costs of this application and suit be awarded to the applicant.
3. Though served, the respondent did not respond to the application. The application is based on grounds appearing on the face of the application and is supported by the Affidavit of Duke O. Omwenga, Advocate. He deposed that he filed an Advocate - Client bill of costs dated 18/5/2021 in respect of services rendered to the respondent in Migori PMCC No. 39 of 2013 Noel Achieng Oluoch vs Monarch Insurance Co. Ltd.



4. A certificate of taxation was issued for the said sum by the taxing master on 10/2/2022 but the respondent has failed to pay the said amount; that interests at the rate of 14% per annum should run from 12/8/2021 when the taxing master assessed the costs.
5. The applicant filed submissions dated 2/3/2022. On whether the certificate of taxation for Kshs. 235,200/= should be converted into a judgement, the applicant referred this court to Section 51 (2) of the *Advocates Act* and submitted that the provision allows the court to enter judgement on a certificate of costs, except when the same has been altered or set aside.
6. Whether the interest on the taxed amount should accrue from 18/5/2021, the applicant relied on the provisions of Order 7 of the Advocates (Remuneration) Order. The applicant submitted that he served the respondent with the bill on 17/6/2021 and the ruling was delivered on 12/8/2021 almost 60 days from the date of service. He contended that he is entitled to interest from 12/8/2021 to the time of the delivery of the ruling. He further relied on the case of *Otieno Yogo & Co. Advocates vs Kisumu Water and Sewerage Company Limited* (2018) eKLR.
7. On the issue of costs, the applicant asked this court to consider Section 27 of the *Civil Procedure Act* and award him costs.
8. There is no dispute on the issue of retainer and advocate - client relationship. Although there is no evidence that a fee note was served upon the respondent which it failed to honour, it is not a precursor to filing a bill of costs.
9. I have considered the application, its supporting affidavit and the annexure thereto. It is evident that the respondent was served with the bill of costs dated 18/5/2021 on 17/6/2021. Since the respondent failed to appear, the taxing master taxed the bill of costs and issued a Certificate of Costs dated 10/2/2022 for Kshs. 235,200/= which has not been challenged or set aside.
10. Section 51 (2) of the *Advocates Act* reads: -

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.
11. Pursuant to the above provisions, since there is no dispute to these proceedings, the court should enter judgment for the sum certified as costs due. I therefore enter the same in favour of the applicant in the sum of Kshs. 235,200/=.
12. Paragraph 7 of the Advocates Remuneration Order provides: -

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.
13. As provided for under Paragraph 7 of the Advocates Remuneration Order, an advocate is entitled to interest at the rate of 14% at the expiry of one month from the delivery of his bill to his client. This was the observation by the court in the case of *Otieno Yogo & Co. Advocates* (supra) where it was observed that the bill was received by the respondent on 12/7/2016 and 30 days from then, is 12/8/2016; and that is when the 14% interest should start running. Therefore, the applicant is entitled to interest on the taxed amount at the rate of 14% per annum from 17/7/2021 being 30 days from the service of the bill of costs.



14. On the issue of costs, I am persuaded by the decisions made in similar applications before courts of concurrent jurisdictions and the court proceeded to award costs. I therefore assess and award costs of this application to the applicant in the sum of Kshs. 20,000/= all inclusive. See the decisions in *J.G. Kariuki t/a Gachiri Kariuki & Co. Advocates v Invesco Assurance Co. Ltd* (2019) eKLR and *Margaret A. Asingo vs South Nyanza Sugar Co. Ltd* (2019) eKLR.
15. I find that the application dated 11/2/2022 has merit and make the following orders: -
1. The Certificate of Costs issued to the applicant, dated 10/2/2022 is hereby converted into a judgement and decree of this court and consequently, a judgement is entered for the applicant against the respondent, for Kshs. 235,200/=.
 2. Interest on the sum of Kshs. 235,200/=, do accrue at the rate of 14% per annum, with effect from 17/7/2021, until payment shall be made in full.
 3. Costs awarded to the applicant in the sum of Kshs. 20,000/=.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 28TH DAY OF JUNE 2022.

R. WENDOH

JUDGE

Ruling delivered in the presence of

Ms. Ondieki for the Applicant.

N/A for the Respondent.

Nyauke Court Assistant.

