



Kitulu t/a Muema Kitulu & Co Advocates v Gateway Insurance Company Limited (Miscellaneous Civil Application 888 of 2013) [2022] KEHC 17008 (KLR) (Civ) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 17008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 888 OF 2013**

JN MULWA, J

NOVEMBER 24, 2022

BETWEEN

MUEMA KITULU T/A MUEMA KITULU & CO ADVOCATES APPLICANT

AND

GATEWAY INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The advocates –client bill of costs dated September 9, 2013 was taxed as drawn on the 30th of September 2016, and a certificate of taxation drawn at Kshs 189,538.70/= duly on the 9th of May 2016.
2. By an application dated July 23, 2020, the Advocates Muema Kitulu & Company Advocates invoked section 51(2) of the *Advocates Act*, cap 16 Laws of Kenya seeking orders:
 - a. That this honourable court be pleased to enter judgment against the respondents for the sum of Kshs 189,538.70/= only being the taxed and certified costs.
 - b. That the honourable court be pleased to award interest at 14% per annum from the date of filing the bill until payment in full.
 - c. That the costs of the application be borne by the respondents
3. The supporting affidavit is sworn by Muema Kitulu Advocate. The certificate of taxation is annexed thereto as an exhibit.
4. Though served with the application, the respondents has not opposed the prayers sought. However, when parties appeared before me for hearing of the application. Mr Baraka for the respondents told the court that the client is not opposing the application save for the rate of Interest at 14% per annum and proposed 6% per annum rate, but without any replying affidavit or grounds of opposition filed.



5. The Advocates relied on the provision of section 51(2) of the *Advocates Act* which empowers the court to enter judgment on taxed costs in favour of the Advocates. Further, section 7 of the *Advocates Remuneration Order* 2014 was also involved citing that the said rule provides for interest on taxed costs at fourteen (14%) percent per annum until payment in full
6. This is in view of the fact that interest is paid for the purpose of compensating a claimant for being denied its money *Lata Vs Mbiyu* (1965) EA 592; *Makhecha & Company Advocates Vs Central Bank of Kenya* (2020) eKLR-wherein the court rendered that rules 7 of the *Advocates Remuneration Order* entitles an advocates to charge interest at the applicable interest before payment of the costs.
7. In *Lubulellah & Associates Vs NK Brothers Limited* (2014) eKLR cited by the Court of Appeal in *Otieno , Ragot and Company Advocates Vs Kenya Airports Authority* (2021) e KLR the court held that once a certificate of costs is issued and there was no reference against the decision of the taxing master, and the certificate of costs has not been set aside, no other action was required save for entry of Judgment by the court.
8. The court has discretion to determine when interest ought to accrue and several courts have held different opinion :-one of the schools of thought is the opinion that interest ought to run from the date the fees note is sent to the client irrespective of whether the bill of cost is subsequently reduced on taxation *D Njogu & Company Advocates Vs Kenya National Capital Corporation* (2006) e KLR,
9. The other school of thought is that rule 7 of the *Advocates Remuneration Rule* is clear that interest is chargeable at 14% per annum; from the delivery of the bill to the client, provided that the claim for interest was raised before the amount of the bill is settled.
10. I subscribe to the school that interest should be charged at 14% per annum (or as may be agreed by the parties) from the date the bill of costs is filed.

This is informed by the fact that the bill of costs is filed due to failure by the respondents to settle the fees as charged by an applicant and just as a special damages pleaded and proved, it ought to accrue interest from the date of filing of the bill for taxation.

At prayer number (b); it is requested that interest at 14% be awarded on the taxed costs from the date of filing the bill of costs until payment in full. There is no dispute that the bill of costs was filed upon the client failing to pay fees for the services rendered which bill of costs was filed on the 9th of September 2013: was taxed and certificate at Kshs 189,538.70-on the 30th of March 2016. It is also not disputed that the certificate of taxation was served upon the client who failed to settle the taxed costs, necessitating filing of the instant application dated July 23, 2020.

Back To The Application Under Review:

11. This is further buttressed by the client/respondents who is not opposed to the application save to propose interest at 6%, without elaborating on the reasons for departure from provisions of rule 7 thereof.
12. Having carefully considered the entirety of the application, the law as stated under the *Advocates Remuneration Order* 2014, and order 52 rule 2 of the *Civil Procedure Rules* 2010, I am persuaded to allow the application.
13. Consequently, Judgment is hereby entered against the respondents for the sum of Kshs 189,538.70/= being the taxed and certified costs in favour of the applicant. The said sum of Kshs 189,538.70/= shall accrue interest at the rate of 14% per annum from the data of filing the bill of costs, being the 9th of September 2013.



There shall be no orders as to costs of the application.

DATED, DELIVERED AND SIGNED IN KAJIADO THIS 24TH NOVEMBER, 2022

HON J.N.MULWA

JUDGE

