



**Mokaya Ogutu & Co Advocates v African Merchant Assurance Company (Miscellaneous Civil Application 24 of 2019) [2021] KEHC 9816 (KLR) (16 April 2021) (Ruling)**

Neutral citation: [2021] KEHC 9816 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CIVIL APPLICATION 24 OF 2019**

**JN ONYIEGO, J**

**APRIL 16, 2021**

**BETWEEN**

**MOKAYA OGUTU & CO ADVOCATES ..... APPLICANT**

**AND**

**AFRICAN MERCHANT ASSURANCE COMPANY ..... RESPONDENT**

**RULING**

1. Before me is a notice of motion dated November 19, 2019 and filed on November 20, 2019 seeking orders as follows;
  1. That judgment be entered against the respondent/client in the sum of Kshs 372,375;
  2. That this honourable court be pleased to award interest at 14% on the taxed amount from November 11, 2019 up to the date of payment;
  3. That costs of this application and all incidental costs be provided for.
2. The applicant relies on grounds stated on the face of the application and the averments contained in the affidavit in support sworn on November 19, 2019 by Kennedy O Mokaya counsel practicing in the name and style of Mokaya Ogutu and Company Advocates.
3. It is the applicant's case that on March 6, 2012 through a letter of even date the respondent instructed them to appear and represent the defendant in Taveta SPMCC No 31/2011 *Allen Archie Lelekuji v Samuel Thumbi*.
4. That the applicant entered appearance and represented the defendant to conclusion. He averred that every effort to recover their legal fees from the respondent has been futile. Consequently, on August 1, 2019 they filed a bill of costs for taxation. The same was taxed at Kshs 272,375 on January 31, 2019 and a certificate of costs dated August 31, 2019 drawn and issued.



5. Despite service of the application herein and hearing notice, the respondent did not bother to respond nor appear in court. The matter therefore proceeded *ex parte*. Mr Ratemo holding brief for Mokaya for the respondent purely relied on the content contained in the affidavit in support of the application and a list of authorities attached thereof.
6. I have considered the application herein, affidavit in support and materials attached thereof. I have also considered the taxed bill of costs plus the certificate of costs all of which have been attached. Section 51 (2) under which this application is anchored provides that;

“The certificate of the taxing officer by whom a 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”
7. From the record, the respondent was given an opportunity to settle their case. They have squandered the same. The applicant has followed every legal step to realize what is due to them. I have no reason not to grant the prayers sought.
8. Regarding interest, it is natural that an outstanding debt attracts interest unless the court expressly states otherwise. Rule 7 of the [Advocates Remuneration Order](#) provides as follows on award of interest;

“An advocate may charge interest at 14% per amount 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 it raised before the amount of the bill has been paid or tendered in full”.
9. The applicant has since March 6, 2012 when they were instructed remained without pay. The only way to cushion them against inflation is to award interest which is even provided for in the subsidiary legislation aforesaid.
10. Accordingly, I am satisfied that the application herein is merited and the same is allowed as prayed with orders that;
  - (a) Judgment is hereby entered against the respondent in the sum of Kshs 272,375 as per the certificate of taxation dated April 4, 2019
  - (b) Interest at the rate of 14% is hereby entered in favour of the applicant with effect from November 11, 2019 until full payment.
  - (c) Costs of the application is provided for.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 16TH DAY OF APRIL, 2021.**

**J N ONYIEGO**

**JUDGE**

