



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISCELLANEOUS CIVIL APPLICATION NO 148 OF 2020**

**IN THE MATTER OF ADVOCATE REMUNERATION ORDER**

**AMONDI & COMPANY ADVOCATES.....ADVOCATE**

**VERSUS**

**COUNTY GOVERNMENT OF KISUMU.....CLIENT**

**RULING**

1. In its Notice of Motion dated 28<sup>th</sup> May 2021, the Advocate sought for orders that the Certificate of Costs in respect of the taxation order made on 27<sup>th</sup> November 2020 for the sum of Kenya Shillings One Hundred and Sixty Eight Thousand One Hundred and Thirty Three Cents only (Kshs 168,108.33) be adopted as Judgment and Decree of this court together with interests at (14%) per cent per annum from the date of filing of the bill for taxation on 24<sup>th</sup> July 2020 till payment in full. He also sought to be awarded the interest accrued on the costs and disbursements from the date of filing of the bill for taxation thereof.
2. Dahlin Mathairo, an Advocate practicing in the firm of Amondi & Co Advocates, swore an Affidavit on 28<sup>th</sup> May 2021 on behalf of the Advocates in support of the said application herein.
3. The Advocates averred that the Client instructed them to act on its behalf in the case **Principal Magistrates Court Civil Suit No 116 of 2016** which they ably did to its conclusion. It was their contention that they prepared and forwarded a final fee note in respect of the professional fees and disbursements to the Client for settlement.
4. They asserted that the said Advocate-Client Bill of Costs was taxed on 27<sup>th</sup> November 2020 at the sum of Kshs 168,108.33 and a Certificate of Costs certifying the same issued. They added that they were entitled to interest on costs and disbursements computed in the Bill of Costs at the rate of 14% per annum since the date of filing the Bill of Costs as contemplated in Rule 7 of the Amended Advocates Remuneration Order.
5. They were categorical that the said Certificate of Costs had not been altered or set aside by Court and thus urged this court to enter judgment in their favour.
6. In opposition to the said application, the Client filed Grounds of Opposition dated 21<sup>st</sup> June 2021. The same were filed on 22<sup>nd</sup> June 2021.
7. It contended that the Advocate's application was an abuse of the court process intended to create a legal morass, elevate costs unnecessarily and did not meet the threshold for the grant of the orders sought. It added that the Advocate's application was frivolous, incompetent, misconceived, offended Rule 7 of the Advocate Remuneration Order and ought to be dismissed.
8. The Advocate's Written Submissions were dated and filed on 12<sup>th</sup> July 2020 while those of the Client were dated and filed on 22<sup>nd</sup> September 2021. The Ruling herein is therefore based on the said Written Submissions which the parties relied upon in their entirety.

**LEGAL ANALYSIS**

9. The Advocates relied on the provisions of Section 51(2) of the Advocates Act Cap 16 (Laws of Kenya) which empowers the court to enter judgment on taxed costs in favour of an advocate. In this regard, they placed reliance on the case of **Republic vs City Council of Nairobi; Ivyland Park Ltd (Interested Party) Ex parte Inderpal Singh & 2 Others suing as Officials of Convent Drive South Residents' association [2021]eKLR** where the Court cited various cases amongst them **Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited** (eKLR citation not given) where the court arrived at the same conclusion.
10. They were also emphatic that Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at fourteen (14%) per

cent per annum until payment in full. They relied on the case of **Makhecha and Company Advocates vs Central Bank of Kenya [2020] eKLR** where the court therein held that Rule 7 of the Advocates Remuneration Order entitles an advocate to charge interest above the normal or applicable rate of twelve (12%) per cent provided that the claim for interest was raised before payment or settlement of the advocate's bill of costs.

11. They invoked Section 26(1) and (2) of the Civil Procedure Act Cap 21 (Laws of Kenya) and urged the court to find that the purpose of an award of interest was to compensate a claimant for being denied its money as stated in **Lata vs Mbiyu [1965] EA 592**.

12. The Client also invoked Section 51 of the Advocates Act and Rule 7 of the Advocate's Remuneration Order. It placed reliance on the case of **Lubulellah & Associates Advocates vs N.K. Brothers Limited [2014]eKLR** which was cited by the Court of Appeal in the case of **Otieno, Ragot & Company Advocates vs Kenya Airports Authority [2021] eKLR** where it was held that once a certificate of costs was issued and there was no reference against the decision of the taxing master, and the certificate of costs had not been set aside and/or altered, no other action was required save for entry of judgment by the court and that no suit for recovery of costs was required.

13. It argued that the Advocates were seeking to convert the certificate of costs into judgment of the court and subsequently into a decree, yet there was no decree and what the Advocate is seeking the court to do is to convert the certificate of costs into judgment of the court and subsequently into a decree contrary to Section 26 of the Civil Procedure Act. It was its contention that it was only after judgment was entered and a decree extracted could the issue of the rate of interests and when the same ought to begin to run could be dealt with.

14. It urged the court to take a purposive interpretation of Rule 7 of the Advocate Remuneration Order which gave the impression that it applied when an applicant submitted the bill to a client and there was accord interest therein in the amount payable and it was from then that the thirty (30) days would begin to run and if the bill remained unpaid after thirty (30) days elapsed and the amount claimed was certain then the interests start to accrue (sic).

15. It added that application of Rule 7 of the Advocate's Remuneration Order was a discretion power that must be exercised in a judicious manner. It submitted that the use of the word, "may" meant that it was a possibility and not mandatory. It added that if the interests rate chargeable was mandatory, then the drafters of the rule ought to have used the verb "shall". It was emphatic that interest was only payable when it was claimed and before the amount was paid in full but that it was not mandatorily.

16. It referred this court to the case of **Mercy Mwangi t/a Mwangi Kingera & Company Advocates vs Invesco Assurance Company Limited [2017] eKLR** where it was held that the discretion to be exercised by the court came with the power to reduce the period in which the interest was payable or to extend or alter the rate at which interest was payable or to withhold the entire interest payable in the interests of justice.

17. It urged the court to withhold interest all together because it was a public entity, that there was no agreement, that it was not clear whether the bill was submitted to it for settlement so as to determine when interest would begin to accrue and that the Bill of Costs was reduced astronomically. It was emphatic Rule 7 provided that interest would only accrue from the date of delivery of the bill of costs and not from the date of filing.

18. It was its contention that in the event this court was inclined to award interest, then it ought to be guided by Section 26(1) of the Civil Procedure Act and the decision in **Otieno Ragot & Company Advocates vs Kenya Air Ports Authority** (Supra). It was apprehensive that the Advocate cannot purport to compute interest on the amount that is unknown at the time of filing of the bill or a suit.

19. Section 51(2) of the Advocates Act provides as follows:-

**"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."**

20. Rule 7 of the Advocates (Remuneration) Order provides that:-

**"An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full."**

21. Having carefully considered the respective parties' Written Submissions, it was clear that the Certificate of Costs that was issued by the Taxing Officer had not been set aside and/or altered. Indeed, no reference under Paragraph 11 of the Advocates Remuneration Order challenging the decision of the said Taxing Master. It was also evident that the Client was not opposed to the adoption of the taxed costs as a judgment sum. What it objected was the interest accruing from the date of filing the Bill for taxation.

22. Notably, several courts have held that the court has the discretion to determine when interest ought to run. In the case of **Otieno Ragot & Company Advocates vs Kenya Ports Authority** (Supra), it was held that although Rule 7 entitled an advocate to claim interest, the time from when interest would run was not stipulated and was therefore left to the discretion of the court.

23. In the case of **D. Njogu & Company Advocates vs Kenya National Capital Corporation [2006] eKLR**, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that the "correct fee note" meant a bill that was in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client did not dispute, or the bill which was in accordance with the sums awarded by

either the taxing officer or by the deputy registrar in a certificate of costs.

24. This court took respectful view that Rule 7 of the Advocates Remuneration Rules is clear that interest is chargeable at fourteen (14%) per cent per annum, from the expiration of one month from the delivery of the bill to the client. There was therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.

25. Going further, interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served. Rule 7 of the Advocates Remuneration Rules provides that interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.

26. It was not clear to this court when the bill was submitted to the Client for settlement. Although the Advocate claimed to have served the same upon the Client on 21<sup>st</sup> August 2020, it did not attach any document to prove the same. Be that as it may, this court noted from the proceedings before the Taxing Master that the Client was represented on 26<sup>th</sup> August 2020 when the parties first appeared before the Taxing Master. They were both present when she delivered her decision on 27<sup>th</sup> November 2020.

27. In the absence of any evidence of when the Bill of Costs was first delivered to the Client, this court took the firm view that the Client was certainly aware of the Advocate- Client Bill of Costs as at 26<sup>th</sup> August 2020. The Bill of Costs has remained unpaid to date.

28. Bearing in mind the holding of **D. Njogu & Company Advocates vs Kenya National Capital Corporation** (Supra) which this court fully associated itself with, this court came to the firm conclusion that the one (1) month envisaged in Rule 7 of the Advocates Remuneration Order lapsed on 26<sup>th</sup> September 2020. Interest would thus accrue on the certified costs from 26<sup>th</sup> September 2020.

29. The Client's argument that there was no decree in place was immaterial. The certified costs became payable as the certificate of costs was not altered or set aside. The claim for payment of fourteen (14%) per cent per annum was raised in the present application and as the certified costs had not been paid, the same was payable.

#### **DISPOSITION**

30. The upshot of this court's decision was that the Advocate's Notice of Motion application dated 28<sup>th</sup> May 2021 and filed on even date was partially merited and the same be and is hereby allowed in the following terms:-

**a. Judgment be and is hereby entered in favour of the Advocate in the sum of Kenya Shillings One Hundred and Sixty Eight Thousand One Hundred and Thirty Three Cents only (Kshs 168,108.33) together with interest thereon at fourteen (14%) per cent per annum calculable after thirty (30) days from the date when application was served upon the Client.**

**b. Costs of this application be awarded to the Advocate.**

31. It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 15TH DAY OF DECEMBER 2021**

**J. KAMAU**

**JUDGE**