



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION- MILIMANI

MISC APP NO. 195 OF 2018

IN THE MATTER PF ADVOCATE-CLIENT BILL OF COSTS

BETWEEN

WAIGURU NJUGUNA & CO. ADVOCATES.....APPLICANT

VERSUS

UAP PROVINCIAL INSURANCE CO. LTD.....RESPONDENT

ARISING FROM NAIROBI CMCC NO. 702 OF 2008

DIANA WAIGUMO MAINA.....PLAINTIFF

VERSUS

NAIROBI BOTTLERS.....1ST DEFENDANT

EDWARD KASESE.....2ND DEFENDANT

RULING

By an Application dated and filed on 10th January 2019, the Applicant sought for orders that:

- 1. Judgment be entered for the Applicant against the Respondent in the sum of Kshs. 89,003/=;**
- 2. The Applicant be awarded interest at the rate of 14% per annum on the said sum of Kshs. 89,003/= from the 23rd April until payment in full; and**
- 3. The costs of the Application be borne by the Respondent.**

On 12th March 2019, the Applicant sought the certificate of taxation following Ruling of **Taxing Master** of 27th July 2018 be adopted as an order of this Court. The Taxing Master taxed the Bill of Costs at Ksh 89,003/- with interest at the rate of **14%** per annum from 23rd April 2018 to date until payment in full.

The Applicant submitted the Bill of Costs was filed on 10th Jan 2019 and served the Respondent. No objection was raised with the Taxing Master as prescribed under **Section 11(4) of Advocates Remuneration Order by Respondent.**

Therefore in line with **Section 51(2) of Advocates Act /Remuneration of Advocates Part IX**, the Applicant is entitled to judgment as the Taxing Master's ruling on taxation of 24th July 2018 was/is not challenged.

The Respondent filed Grounds of Opposition of 11th March 2019.

The Respondent stated that the application was/is fatally defective and devoid of merit because under **Advocates Act** legal justification must be given for the arrival of interest and operation date. Relying on the letter marked **TWN4** dated 3rd January 2018 means that interest ought to take effect from the date of entry of judgment.

In reply, the Applicant relied on **Rule 7 of Advocates Remuneration Order** on the application of interest.

DETERMINATION

The Court record confirms that the Bill of Costs was scheduled for taxation on 7th June 2018. The Respondent was served but the Affidavit of Service was not filed. The matter was adjourned to 27th June 2018 and Respondent was to be served. There was affidavit of service confirming service to Respondent on 11th June 2018. Ruling was reserved for 24th July 2018 and the same was delivered on the said date. Thereafter the present application was filed and heard *interpartes*.

Counsel for Respondent stated that reasons ought to have been provided for the taxation especially with regard to interest.

Section 11(1) & (2) of the Advocates Act provides;

a) Should any party object to the decision of the Taxing Officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of the taxation he objects;

b) The Taxing Master shall forthwith record and forward to the Objector the reasons for his decision on those terms and the Objector may within 14 days from receipt of reasons apply to a judge in Chamber summons, which shall be served on all parties concerning setting out the grounds for objection.

The Respondent if aggrieved by the process and outcome of the Bill of Costs Taxation did not take up the prescribed avenue for redress as outlined above.

Section 14 of Advocates Remuneration Order grants the Taxation Officer mandate to conduct *ex parte* taxation proceedings in default who after due notice without reasonable excuse fails to appear on the date and time for taxation. The taxation proceedings proceeded *ex parte* after the Taxing Master satisfied herself that the Respondent was duly served on 11th June 2018.

Counsel for the Applicant in his oral submissions relied on **Section 51 (2) of the Advocates Act** to seek entry of judgment for taxed costs. **Section 51 (2) provides:**

“The certificate of 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.”

*On the question of interest, the Ruling by Taxing Master of 24th July 2018 and Certificate of Taxation made no reference to interest. However, the Applicant by application filed on 10th January 2019 sought inclusion of interest at 14% per annum on the sum from 23rd April 2018 until payment in full. Counsel for the Applicant relied on **Rule 7 of the Advocates Remuneration Order** to seek for interest at 14% per annum on his disbursements and costs. **Rule 7** provides as follows:*

“Interest may be charged

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 for or tendered in full.”

The retainer was disputed and taxation proceedings and outcome are also not contested. The Applicant sought the certificate of taxation adopted as judgment of this Court and included interest as prescribed by **Rule 7**. The Applicant seeking interest at the appropriate time before the bill has been tendered in full, and there being no application by the Respondent to set aside the taxed costs, and on reliance on the aforesaid provisions, there is no reason why judgment should not be entered as prayed by the Applicant.

DISPOSITION

- 1. Judgment is hereby entered in favour of Waiguru Njuguna & Co. Advocates as against UAP Provincial Insurance Company Limited for Kshs. 89,003/=;**
- 2. The Applicant is awarded interest at the rate of 14% per annum on the said sum of Kshs. 89,003/= from the 23rd April 2018 until payment in full; and**
- 3. The Applicant is awarded costs of the Notice of Motion dated 10th January 2019.**

DELIVERED SIGNED & DATED IN OPEN COURT ON 27TH MAY 2019.

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF;

NO APPEARANCE FOR APPLICANT

MR. AWOUR HOLDING BRIEF MRS GITHAE FOR RESPONDENT

COURT ASSISTANT -JASMINE