



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**MISC. CIVIL APPLICATION NO. 151 OF 2012**

MUNYITHYA, MUTUGI UMARA & MUZNA COMPANY ADVOCATES.....APPLICANT

VERSUS

ELSEK & ELSEK CONSTRUCTION LIMITED.....RESPONDENT

**RULING**

The application before court is the applicant's Notice of motion dated 13th October 2014.

1. It seeks the following orders:

**(i) That the certificate of taxation dated 6th August 2014 for an amount of Ksh 40,600.00 be deemed the decree of this honourable court.**

**(ii) That interest of 14% to accrue from the date of issue of certificate of taxation till payment in full.**

**(iii) That the costs of this application be provided for.**

2. The applicant claimed that it filed its Advocate-Client Bill of Costs dated 12th March 2012 arising from registration of a limited liability company known as King Fast Foods Limited on the respondent's instructions. That the bill of costs was taxed at Ksh 40,600.00 and a certificate of taxation was issued on 6th August 2014. That the respondent did not file a reference against the taxation order hence the present application to enforce the same.

3. This matter came up for hearing on 18th March 2015 during which the respondent's counsel sought adjournment to enable him respond to the application. The application for adjournment was declined. The matter therefore proceeded without a response from the respondent.

4. The respondent's counsel however, addressed the court at the hearing of the application. He opposed the same on the basis that the respondent did not give the applicant instructions to incorporate the company in issue. He further argued that the applicant ought to have filed suit under section 48 of the Advocates Act.

5. The arguments by the respondent's counsel are mere submissions from the bar. The respondent did not file any affidavit stating that they did not instruct the applicant. Matters that require evidence cannot be submitted from the bar.

6. On the respondent's argument that the applicant ought to have filed suit, the reply is found in the following extract from the case of Lubulellah & Associates Advocates -v- N K Brothers limited ( 2014) eKLR:

***“ The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the applicant against the respondent herein for the taxed sum indicated in the Certificate of Taxation...”***

7. The applicant was therefore in order to have filed the application even though it did not file suit. In my view, since there is evidence that the certificate of costs was issued on 6th August 2014 and the respondent did not file any reference against it nor filed any response to the present application, I find no reason why judgment should not be entered for the applicants against the respondent for the amount certified on the said certificate of costs.

8. On the issue of interest on the certified amount at the rate of 14%, I refer to rule 7 of the Advocates Remuneration Order which provides as follows:

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

9. The interest should be charged after expiration of one month from the time the Advocate delivers his bill to the client. In the instant case, no evidence was produced to show that the applicant delivered its bill to the respondent and when that was done. While dealing with the issue of interest, the high court in the case of Muri Mwaniki & Wamiti Advocates v John Ngigi Ng'ang'a & another (2014) eKRL stated as follows:

***“My understanding of Rule 7 of the advocates Remuneration order is that interest is chargeable from the expiration of one month from delivery of the bill of costs by the advocate to the client.. Evidence of delivery is necessary..To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the certificate of costs but the bill of costs...The amount of the bill may be different from the taxed costs. But for all purposes of Rule 7, interest should be on the amount in the certificate of costs as those are the costs which are payable.”***

10. I therefore find that there was no evidence tendered to demonstrate whether the applicant served the respondent with a bill of costs and when the same was done. That being so the applicants shall be awarded interest at court rate from the date of the judgment.

## **CONCLUSION**

11. I grant the following orders:-

**a) Judgment is hereby entered for the applicant's against the respondent for Ksh 40,600 plus interest from court rate from todays date until payment in full.**

**b) The applicants are also awarded costs of the Notice of Motion dated 13th October 2014.**

**Dated at Mombasa this 25<sup>th</sup> day of June 2015**

**MARY KASANGO**

**JUDGE**

25.6.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For Applicants;

For respondent:

**Court**

Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**