



**Akide & Company Advocates v Registered Trustees of the Kenya
Railways Staff Retirement Benefits Scheme (Miscellaneous Application
48 of 2020) [2022] KEELC 13360 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13360 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION 48 OF 2020
OA ANGOTE, J
SEPTEMBER 30, 2022
IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA**

BETWEEN

AKIDE & COMPANY ADVOCATES APPLICANT

AND

**REGISTERED TRUSTEES OF THE KENYA RAILWAYS STAFF RETIREMENT
BENEFITS SCHEME RESPONDENT**

RULING

Background

1. Vide a notice of motion dated May 4, 2022, brought pursuant to section 51 of the Advocates Act, and all other enabling provisions of the law, the applicant seeks the following reliefs:
 - a. That the certificate of taxation dated April 21, 2022 be deemed as judgment and decree of this honourable court, and judgment accordingly be entered for the applicant against the respondent in the sum of Kenya Shillings thirty one million, three hundred and ninety three thousand, two hundred and seventy-one and fourty cents(Kshs 31,393,271.40) with interest at 14% per annum in accordance with rule 7 of the *Advocates Remuneration Order*, one (1) month from the date of demand until payment in full.
 - b. That the costs of these proceedings be borne by the respondent.
2. The application is premised on the grounds on the face of the motion and supported by the applicant/advocate who deponed that the respondent instructed them to act for it in the sale of LR 209/6505, extension of lease from 17 to 99 years, change of user from single dwelling residential to mixed use and sub-division of the land into six sub-plots.



3. The applicant deponed that upon performance of the instructions, the respondent failed to pay his fees and a dispute ensued culminating in the filing of an advocate-client bill of costs dated June 12, 2020 herein; that despite service of the bill of costs, the respondent neither entered appearance nor appointed an advocate to act on their behalf and that on March 24, 2022, the bill of costs was taxed at Kshs 31,393,271.40.
4. It is the applicant's case that despite demand being made, the respondent has failed to and/or neglected to make payments and that as the certificate of taxation is undisputed, the applicant desires to have the certificate of taxation adopted and deemed as a decree and judgment of the court to enable them pursue recovery. There was no response to the application.
5. The application came up for hearing on 9th of June, 2022. Counsel for the applicant submitted orally and urged the court to allow the application as prayed as the same had been served upon the respondent and was un-opposed.

Analysis and Determination

6. The applicant is seeking to have the certificate of taxation dated April 21, 2022 for Kshs 31, 393,271.40 to be deemed as judgment and decree of this court. Despite service, no response has been rendered by the respondent and the application is un-opposed.
7. The application is premised on section 51(2) of the *Advocates Act* which stipulates 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.”
8. Similarly, the court in *Musyoka & Wambua Advocates v Rustam Hira Advocate* (2006) eKLR, persuasively expressed itself thus;

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a certificate of taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit...”
9. The procedure provided in section 51(2) of the *Advocates Act* provides for the expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a certificate of costs; (2) the certificate of costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer.
10. The court has considered the record and finds that a certificate of taxation was issued by this court on April 21, 2022 in respect of the advocate-client bill of costs of June 12, 2020 taxed on March 24, 2022 for the sum of Kshs 31, 393, 271.40. The court also finds that the respondent was properly served with the application and has not disputed the certificate of taxation. Consequently, the only order which commends itself to this court is to adopt the certificate of taxation dated April 21, 2022 as a judgment of this court in favour of the applicant for the amount of Kshs 31,393, 271.40.



11. As regards the issue of interest, the applicant has claimed for interest on the taxed amount at the rate of 14% per annum. Rule 7 of the [Advocates \(Remuneration\) Order](#) is instructive and provides that;

“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 such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

12. The Court of Appeal in [Machira & Co Advocates v Arthur K Magugu & another](#) [2019] eKLR, while considering the import of rule 7 aforesaid held that;

“The learned judge found correctly in our view that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per annum at least one (1) month before filing the bill of costs. The appellant relied on a letter from counsel for the respondent to justify his position that the learned judge should have awarded him interest at 14% from the date of taxation. We note that the said letter refers to the decretal sum claimed while the issue of interest has not been addressed. The appellant did not produce a copy of his firm’s letter of August 9, 2001 referred to in the respondents’ counsels letter of September 20, 2001 to support his claim.

Accordingly, we find that the learned judge did not err in finding that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per cent at least one (1) month before they filed their bill of costs. They were therefore not entitled to interest at 14%.”

13. I have perused the bill of costs dated June 12, 2020 filed by the applicant and have not found any evidence to show that the applicant notified the respondent that they would seek interest before pursuant to the provisions of rule 7 of the [Advocates \(Remuneration\) Order](#). As such, they are not entitled to the same.

14. On the issue of costs, courts have the ultimate discretion. This is expressed in section 27 of the [Civil Procedure Act](#) which provides as follows;

“Subject to such conditions and limitations as may be prescribed , and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by who and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those power;

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

15. Taking into account the circumstances of the case and in particular noting that the application has not been opposed, the court holds that each party should bear its own costs of the proceedings.

16. The upshot of this is that the notice of motion application dated May 4, 2022 partly succeeds and is allowed in the following terms;

a. The certificate of taxation issued to the applicant, as against the respondent dated April 21, 2022 ^{is} hereby converted into a judgment and decree of this court and consequently, a judgment is entered for



the applicant against the respondent, for the sum of Kshs 31,393,271.40 together with interest thereon at court rates from the date of this ruling until payment in full.

b. Each party to bear its own costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022.

O. A. ANGOTE

JUDGE

In the presence of;

Ms. Martha for Akida for Applicant

No appearance for Respondent

Court Assistant - June

