



KTK Advocates v Nairobi City County (Environment & Land Miscellaneous Case E080 of 2020) [2022] KEELC 15146 (KLR) (5 December 2022) (Judgment)

Neutral citation: [2022] KEELC 15146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E080 OF 2020**

JA MOGENI, J

DECEMBER 5, 2022

BETWEEN

KTK ADVOCATES ADVOCATE

AND

NAIROBI CITY COUNTY CLIENT

(In respect of the Application dated 19/07/2020 for entry of Judgment after issuance of a certificate of Taxation)

JUDGMENT

1. The applicant filed a notice of motion dated July 19, 2022 filed under sections 51(2) of the *Advocates Act*, chapter 16 laws of Kenya. The applicant is seeking for the following: -
 1. Spent.
 2. That judgment be entered against the client/respondent in the sum of Kshs 1,269,238.58 plus interest at 14% pa from May 17, 2022, until payment in full.
 3. That the costs of this application and all the other incidental costs be provided for.
2. The application is premised on the grounds stated in paragraphs (a) – (c) on the face of the application and the annexed affidavit sworn on July 19, 2022 by Donald B Kipkorir, counsel from the advocate/applicant firm. I do not need to reproduce them.
3. The application is not opposed. The court’s directions were that the application be canvassed by way of written submission. By the time of writing this judgment, none of the parties had complied.
4. The only issue for determination is whether the court should enter judgment in favour of the advocate/applicant as prayed with interest at 14% per annum from May 17, 2022 until payment in full.



5. I will go direct to the point. It is the applicant's uncontroverted evidence that the advocate bill of costs dated October 18, 2020, the subject matter of this application was taxed at Kshs 1,269,238.58. A certificate of costs was subsequently issued on June 27, 2022.
6. The taxation of the advocate's bill of costs has not been challenged by the client in accordance with the provisions of rule 11 of the *Advocates Remuneration Order*.
7. Section 51(2) of the *Advocates Act* is clear and needs no expounding. The certificate of taxation of the taxing officer unless set aside or altered by the court is final in regard to the amount of costs covered.
8. Accordingly, the court finds that the certificate of taxation issued in this matter has not been challenged as provided for under the *Advocates Remuneration Order*. That being the case, the court has no option but to enter judgment in favour of KTK Advocates for the sum of Kshs 1,269,238.58 as prayed.
9. On the aspect of interest, this court will be guided by the Court of Appeal decision in *Otieno Ragot & Co Advocates vs Kenya Airports Authority* (2021) eKLR. The court stated that :-

“The rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursement and costs following submissions of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one (1) month from the date of delivery of the bill or fee note. The learned judge's reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.”
10. The court went farther to consider the claim of interest after taxation of an advocate – client bill of costs and held that:-

“Additionally, it is distinctive that a review of the applicant's bill of costs does not disclose that the applicant included a charge for ‘...interest at 14% per annum on his (her) disbursements and costs...’ in the bill of costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the bill of costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure (Act).”
11. I have looked at the bill of costs that was drawn, filed and presented by the advocate/applicant in this matter. The advocate did not include a charge of interest at 14% per annum which she now claims in her application. Guided by the above cited binding authority, rule 7 cannot therefore apply in this case. I am only then left with the provisions of section 26 of the *Civil Procedure Act*.
12. Exercising this court's discretion under section 26 of the *Civil Procedure Act*, I will instead award the advocate/applicant interest at the rate of 14% per annum but from the date of delivery of this judgment until payment in full.
13. Accordingly, judgment is entered in favour of the advocate/applicant for the sum of Kshs 1,269,238.58 with interest at 14% per annum from December 5, 2022 until payment in full.
14. The costs of the application dated July 19, 2022 are awarded to the advocate/applicant.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF DECEMBER, 2022.



MOGENI J.

JUDGE

In the virtual presence of:-

Mr Kipkorir for Advocate

Mr Chege for Client/Respondent

Caroline Sagina: Court Assistant

