



Makhanu, Odhiambo & Co Advocates v Bett (Environment and Land Miscellaneous Application 188 of 2016) [2024] KEELC 1229 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1229 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 188 OF 2016**

A NYUKURI, J

MARCH 6, 2024

IN THE MATTER OF THE ADVOCATES ACT (CAP 16 LAWS OF KENYA)

AND

**IN THE MATTER OF TAXATION OF BILL OF
COSTS BETWEEN ADVOCATE AND CLIENT**

BETWEEN

MAKHANU, ODHIAMBO & CO ADVOCATES ADVOCATE

AND

ANNE KAREGI BETT CLIENT

RULING

Introduction

1. Vide a Notice of Motion dated 10th July 2023, the client/applicant sought as against the advocate/respondent the following orders;
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to set aside the warrants of arrest issued against the applicant on 15th June 2023 in execution of the decretal sum of Kshs. 852,132.47 inclusive of interest.
 - d. That costs of this application be provided for.
2. The application is premised on the supporting affidavit sworn by Anne Karegi Bett, the client/applicant on 10th July 2023. The applicant's case is that the advocate-client bill of costs dated 10th August 2015 was assessed against the applicant, in the sum of Kshs. 783,675 vide a certificate of taxation



issued on 17th January 2018. Further that vide a decree issued on 9th August 2018, the applicant was ordered to pay the sum of Kshs. 783,675/- being the principal sum, with no order as to costs or interest on the principal sum.

3. The applicant also averred that on 20th August 2021, she paid the sum of Kshs. 783,675/- in full settlement of the decretal amount. She also stated that vide an application for execution dated 31st October 2022, together with a letter addressed to the applicant, the respondent acknowledged receipt of the decretal sum of Kshs. 783,765/-. She stated that the advocate had obtained warrants of arrest against her claiming to be entitled to Kshs. 852,132.47 being the decretal sum and interest, yet no interest had been awarded as per the decree of 9th August 2018. She attached the certificate of taxation; ruling delivered on 27th July 2018; certified copy of decree issued on 9th August 2018; letter forwarding application for execution dated 31st October 2023 and the warrants of arrest dated 15th June 2023.
4. The application is opposed. Titus Makhanu, an advocate in the firm of the advocate/respondent filed a replying affidavit sworn on 18th July 2023. He deponed that after extracting the decree dated 9th August 2018, the advocate applied for execution against the client severally wherein they indicated the interest chargeable which were approved by court and served on the applicant and that at no time did the applicant dispute the interest accruing on the decretal sum.
5. He further stated that parties negotiated on the interest whereof the advocate made an offer of Kshs. 500,000/- while the client made a counter offer of Kshs. 344,817/-. He deponed that the client having been willing to pay the aforesaid amount as interest, she is precluded from contesting interest by the estoppel doctrine. He maintained that when the matter came up in court severally, the client did not contest owing interest and that the client having acknowledged that interest is payable, she is liable to pay the same. He attached application for execution and notice to show cause; letters between advocates for the parties; email extracts; causelists and mention notice.

Analysis and determination

6. The court has carefully considered the application, the affidavit in support and the response. The issue that arise is whether the client is liable to pay interest to the advocate and if yes, how much? It is not disputed that the advocate-client bill of costs dated 10th August 2015 drawn by the advocate herein as against the client herein was taxed on 17th January 2018 as demonstrated by the certificate of taxation on record. Pursuant to that taxation, the advocate filed the application dated 13th February 2018, wherein he sought two prayers as follows;
 1. That judgment be entered in favour of the applicant as against the respondent for the sum of Kenya Shillings Seven Hundred and Eighty Three Thousand, Six Hundred and Seventy Five (Kshs. 783, 675/-) as taxed in the certificate of taxation dated 17th January 2018.
 2. That the costs of this application together with interest on the taxed sum be borne by the respondent.
7. Upon hearing the above application on 27th July 2023, this court delivered its ruling and stated in paragraph 8 thereof as follows;

I have not been shown any law which prohibits the court to enter judgment after taxation on the basis of an intended reference. For those reasons, I allow the application dated 13th February 2018 in terms of prayer number 1.
8. In view of the application dated 13th February 2018 and the ruling delivered on 27th July 2018, the court was clear that the only prayer allowed was prayer 1 for entry of judgment in terms of the taxed costs. It



is clear, and unequivocally so, that the court did not grant interest or costs, a position not challenged by the advocate/respondent. I understand the advocate respondent to be arguing that even if there was no order granting interest, since by letter dated 25th October 2022, counsel for the client offered on behalf of the client, to pay interest in the sum of Kshs. 344,817/-, therefore the client is barred to decline to pay interest under the doctrine of estoppel.

9. The doctrine of estoppel is based on notions of justice and equity and requires that where one party by their conduct of acquiescence and encouragement, induces the other party, who based on the former's conduct, engages in conduct to their detriment, the former cannot be allowed to change their position.
10. In the case of *Titus Muiruri Doge v. Kenya Cannery Ltd* [1988] eKLR the court held as follows;

If a party is made so to believe in a certain state of facts and that party acts on those facts, to his detriment, and the other party stands by and does not stop him from so acting, that other party is estopped from changing his stand. If one say to A "go ahead, this is land but you may build on it, spend money, we will go into formalities of transfer later and A does all that, the representor is estopped from denying the right accrued to and acquired by A"

11. In the instant application, the respondent argues that the client having proposed to pay interest in the sum of Kshs. 344,817/- vide the letter dated 25th October 2022 by the client's advocate, she is estopped from challenging being liable to pay interest.
12. Having considered the facts in this case, there is no demonstration by the advocate that he did anything to his detriment basing on the client's letter dated 25th October 2022, to entitle him to benefit from the doctrine of estoppel. My view is that as this court did not award any interest in its ruling of 27th July 2018, the doctrine of estoppel is inapplicable in the circumstances of this case. The proposal to pay a sum of Kshs. 344,817/- as interest by the client does not negate the fact that the court declined to grant interest to the advocate and does not entitle the advocate to get interest as that would be a payment without any legal basis and therefore amount to unjust enrichment.
13. In the premises, I find merit in the application dated 10th July 2023 and I hereby allow the same as sought. Each party shall bear its own costs.
14. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 6TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:

Mr. Okari holding brief for Mr. Makhanu for advocate/respondent

Mr. Towett for applicant/client

Josephine – Court Assistant

