



Wamaitha Kang'ethe & Company Advocates v Kisia & another (Environment & Land Miscellaneous Case 16 of 2020) [2023] KEELC 16420 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 16 OF 2020
EK WABWOTO, J
MARCH 9, 2023**

BETWEEN

WAMAITHA KANG'ETHE & COMPANY ADVOCATES CLAIMANT

AND

PATRICK SAGWA KISIA 1ST RESPONDENT

QUAKER VENTURES LTD 2ND RESPONDENT

RULING

1. This is a ruling in respect to the application dated October 26, 2022, by the Claimant under the provisions of section 51 (1) and (2) of the [Advocates Act](#) and Order 51 of the [Civil Procedure Rules](#). The Application was accompanied by a supporting affidavit sworn by Wamaitha Kangethe where the Applicant sought the following orders:
 - a. That this Court be pleased to enter judgement in favour of the Applicant and a decree do issue for the sum of Kenya Shillings Eight Hundred and Nineteen Thousand Five Hundred and Twenty only (Kshs 819,520/=), being the principal sum of the costs taxed by the taxing master on June 15, 2021 in this cause and certified through the Certificate of Taxation issued on January 14, 2022, together with interest thereon from March 25, 2020 (being more than thirty (30) days after service of the Advocate/Client Bill of Costs on the Respondent on February 25, 2020 until payment in full.
 - b. That the Respondents bear the costs of and/or incidental to this application, together with interest thereon at court rates from the date of filing until payment in full.



2. In its Supporting Affidavit, the Applicant averred that under Part 1 Paragraph 7 of the Advocates Remuneration Order 2014, the law firm was entitled to interest on its legal costs whether by scale or otherwise at 14% p.a. from the expiration of one month from the date of delivery of the bill to the Respondents on February 25, 2020. On this basis, the interest began to run from March 25, 2020.
3. In a Replying Affidavit dated November 23, 2022, the Respondents highlighted that the sum owed had been deposited with his advocates and was awaiting transfer as soon as an undertaking was given by the Applicant to release the Respondents original documents.
4. Before the hearing of the application, the parties herein were granted an opportunity by this court to try and amicable resolve the matter. However, no consensus was reached and this necessitated the hearing of the application. The application was subsequently heard on 1st February 2023 by way of oral submissions made by counsel for the parties. Having considered the evidence and supporting documents, it is clear that the issue for determination before this court is whether the application dated 26th October 2022 is merited to warrant the grant of the orders sought.
5. This Court is guided by Section 51 (2) of the Advocates Act which provides 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.”
6. Rule 7 of the Advocates (Remuneration) Order provides that:-

“An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”
7. Section 26 and Section 27 of the Civil Procedure Act outlines the Court’s discretion to award interests and costs. Ultimately, it is in the interest of justice for litigation to come to an end. In Hasanali v City Motor Accessories Ltd & others [1972] EA 423 the Court upheld:

“There is no rule of thumb that a successful litigant who has been awarded costs must get interest on those costs. Indeed, the decisional principle in our jurisdiction seems to run in the opposite direction: it is not normal to award interest on costs.”
8. Lastly, I share in the sentiments in the Court of Appeal case of Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR reiterating the position in Lubullellah & Associates Advocates vs N. K. Brothers Limited [2014] eKLR where the court observed that;

“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.
9. In view of the foregoing, this Court hereby finds that the Notice of Motion Application dated October 26, 2022 is merited and the same is allowed in terms of prayer 1 with no orders as to costs.



It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MARCH, 2023.

E. K. WABWOTO

JUDGE

