



REPUBLIC OF KENYA



KENYA LAW
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Wambugu & Kiplagat Advocates v Nanak Hospital Management Services Limited (Environment & Land Miscellaneous Case 112 of 2019) [2023] KEELC 17866 (KLR) (7 June 2023) (Judgment)

Neutral citation: [2023] KEELC 17866 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 112 OF 2019**

JA MOGENI, J

JUNE 7, 2023

BETWEEN

MUNENE WAMBUGU & KIPLAGAT ADVOCATES APPLICANT

AND

NANAK HOSPITAL MANAGEMENT SERVICES LIMITED RESPONDENT

JUDGMENT

1. The matter coming up for determination is the notice of motion application dated July 4, 2021 brought under section 51(2) of the [Advocates Act](#) chapter 16 of the laws of Kenya seeking the following orders:
 1. That judgment be entered for the applicant as against the respondent for the sum of Kshs 2,285,085.48 being the certified costs due to the applicant.
 2. That the applicant be awarded interest at the rate of 14% per annum from 1st of September 2019 (being the 30th date from the date on which the bill of costs was served upon the respondent) as provided for at part 1 paragraph 7 of the [Advocates Remuneration Order](#).
 3. That the respondent do pay to the applicant the cost of the application.
2. The application is premised on the grounds that:
 - a. The advocate -client costs due to the applicant herein were taxed at Kshs 2,285,085.48 and a certificate of taxation issued to that effect.
 - b. That there is no dispute that the respondent had retained the applicant herein as her advocates in respect of which advocate-client costs were taxed herein.
 - c. It is only fair and just in the circumstances that judgment be entered for the sum certified to be due to the applicant herein.



3. The application is based on the grounds on the face of it and an affidavit dated July 4, 2021, sworn by CK Kiplagat, an Advocate of the High Court of Kenya, practicing in the name and style of Munene Wambugu and Kiplagat Advocates. The applicant avers that, it filed an advocate-client bill of costs (herein “the bill”), and the same was taxed vide a ruling delivered by the Taxing master on March 5, 2020. A certificate of taxation was issued on September 18, 2020. The bill was served on the respondent on August 1, 2019 but he has declined to pay willfully despite several reminders.
4. The application is opposed. The respondent filed a replying affidavit dated October 26, 2020, sworn by Dr Janardan Dhayabhai Patel the respondent herein. He deposed that, the respondent settled all the fees that was raised by the applicant. He averred that the respondent is prejudiced by the ruling dated the March 5, 2020 and subsequently certificate of costs dated July 16, 2019 and the respondent has since then filed an application seeking leave to appeal against the ruling. Through its advocates on record in the name and style of Nyawara and Co Advocates filed a notice of preliminary objection dated October 30, 2019.
5. Further that in the course of the suit the respondent’s advocate fell ill and dies and when the ruling was rendered on March 5, 2021 the respondent was not informed because the advocate was demised and he was not aware about the court ruling until the auctioneers went to his office to execute the order of the court dated March 5, 2021. That the respondent has now instructed Gopichandra & Co Advocates who filed their notice of change of Advocates dated October 18, 2021 and sought the file from the law firm of the deceased Nyawara advocates to no avail. That the new advocate had to write to the deputy registrar to allow them to have a copy of the court file for records and enable him to understand the matter suit. The respondent prays that the notice of motion dated July 4, 2021 is dismissed with costs.
6. The court’s directions were that the application be canvassed by way of written submission. by the time of writing this judgment, both parties had complied with the court’s directions and i have considered their submissions. The applicant had filed his submissions on November 15, 2021 and the respondent had filed his submissions on November 3, 2021.
7. 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 September 1, 2019 until payment in full.
8. It is the applicant’s evidence that the advocate-client bill of costs dated July 16, 2019, the subject matter of this application was taxed at Kshs 2,285,085.48. A certificate of taxation was subsequently issued on September 18, 2020.
9. The taxation of the advocate’s bill of costs has been challenged by the client in accordance with the provisions of rule 11 of the *Advocates Remuneration Order*. The respondent filed a reference dated April 4, 2022 wherein they expressed dissatisfaction with the taxing officer’s ruling delivered on March 5, 2020. This Court however dismissed the said reference vide its ruling delivered on November 23, 2022. The respondent notified the court that they had filed a notice of appeal but the court notes that there is no order of stay that has been issued by the Court of Appeal.
10. 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.
11. 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 Munene Wambugu and Kiplagat Advocates for the sum of Kshs 2,285,085.48 as prayed.



12. On the aspect of interest, the applicant relied on *Nyaundi Tuiyott & Co Advocates v African Marchant Assurance Co Limited* [2018] eKLR submitting that the court be guided by rule 7. However, 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.”

13. The court went further 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).”

14. 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 he now claims in his application. Guided by the above cited bidding 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*.

15. 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.

16. Accordingly, judgment is entered in favour of the advocate/applicant for the sum of Kshs 2,285,085.48 with interest at 14% per annum from June 7, 2023 until payment in full.

17. The costs of the application dated July 4, 2021 are awarded to the advocate/applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF JUNE, 2023.

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MOGENI J.

JUDGE

In the virtual presence of:-

Mr Sanjay for the Respondent

Mr Kiplangat for the Advocate/Applicant

Ms. Caroline Sagina: Court Assistant

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**MOGENI J.
JUDGE**

