



Advocates v Consultancy & another (Environment and Land Miscellaneous Application 049 of 2019) [2022] KEELC 2325 (KLR) (7 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2325 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 049 OF 2019
EK WABWOTO, J
JULY 7, 2022

BETWEEN

DANIEL OCHIENG OGOLA T/A OGOLA OKELLO & CO.
ADVOCATES APPLICANT

AND

IRENE ATIENO AJWANG T/A HIGHFLASH INVESTMENTS AND
CONSULTANCY 1ST RESPONDENT
DAVID SILA SULWEY 2ND RESPONDENT

RULING

1. This is a ruling in respect Notice of Motion dated 8th September, 2021 by the Applicant under the provisions of Section 44, 51(1) and 51(2) of the *Advocates Act*. The application seeks orders that judgment be entered against the Respondents for Kshs. 192, 225.40/- being the taxed and certified costs and interest therein.
2. The Application is based on the grounds on the face of the same and the Supporting Affidavit of Christopher Ochieng Advocate sworn on 8th September, 2021. The grounds advanced in support of the Application are that the Advocate bill of costs was taxed on 15th April 2021 and that the order of this Court adopting the Certificate of Taxation as a judgment and subsequently as a decree of the court is necessary to enable execution by the Applicant.
3. Pursuant to the directions of this Court issued on 24th April 2022, the Court directed the Application be canvassed through written submissions. The parties were given timelines within which to file and exchange their respective submissions. The material on record shows that the Applicant filed their written submissions dated 5th May 2022 while the Respondent's submissions were not on record by the time of preparation of this Ruling.



4. I have considered the written submissions, the Application and the Supporting Affidavit. Section 51 (2) of the Advocates Act provides that,

“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.”

5. In this matter, I find that the Respondents was properly served with the Application and as such having not disputed the Certificate of Taxation dated 30th July 2021, this Court will therefore enter judgment against the Respondent for the said taxed costs of Kshs. 192,225.40/=

6. As to the interest, Regulation 7 of the Advocates (Remuneration) Orders provides that,

“7. 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.”

7. The wording of this regulation is clear that for an Advocate to charge interest, there must have lapsed a period of one month after the bill was delivered to the Client. The regulation is also specific that the claim for interest should have been raised. Regulation 7 provides that the bill must not only be served but a claim for interest should also be raised by the Applicant. There is no evidence that such interest was demanded. In such a case, I am not able to make an award for interest.

8. On the issue of costs, courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the case but also the circumstances of each case. The Respondents did not resist the application and in the circumstances, I will spare them costs and direct that each party to bear own costs of these proceedings.

9. Consequently, the application therefore stands allowed as follows:

- i. Judgment be entered in favour of the Applicant against the Respondents for Ksh 192,225.40/=
- ii. The claim for interest is declined.
- iii. Each party to bear its own costs of the application.

10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF JULY 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Ochieng for the Applicant.

N/A for the Respondent.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO



JUDGE

