



Kanai t/a A Thuo Advocates v Cannon Assurance Limited (Miscellaneous Application 150 of 2013) [2025] KEHC 4311 (KLR) (Commercial and Tax) (4 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 150 OF 2013**

NW SIFUNA, J

APRIL 4, 2025

BETWEEN

ANTHONY THUO KANAI T/A A THUO ADVOCATES ADVOCATE

AND

CANNON ASSURANCE LIMITED CLIENT

RULING

1. For determination is the Advocate's dated 21st July 2021. The same which was brought under the provisions of Section 51(2) of the *Advocates Act* (Cap 16 Laws of Kenya), Rule 7 of the *Advocates (Remuneration) Order 2009* seeks the following orders:
 - a. Judgment against the Client, for the sum of Ksh 839,388= being Advocate-Client taxed costs in terms of the Certificate of Taxation dated 4th May 2021.
 - b. Interest on the said sum of Ksh 839,388= at the rate of 14% per annum from 14th February 2013 being one month after service of the fee note on the Client specifying that interest will be charged on costs until payment of costs made on 7th August 2019, pursuant to Rule 7 of the Advocates (Remuneration) Order, 2009.
 - c. The costs of this application be provided for."
2. The Application is based on the grounds stated in it. That the Advocate's Bill of Costs dated 24th April 2013, which was taxed and allowed by consent at Ksh 839,388= on 2nd July 2019 and certified by a Certificate of Taxation.
3. The Client settled the amount on 7th August 2019 and the Advocate would wish to be paid the accrued interest from the period of one month after service of the fee note to the Client. Which date was 14th February 2013 to the date of payment of the costs made on the 7th August 2019.



4. The Advocate asserted that the Client was served with the Fee Note on 14th January 2013 and advised thereon that the fees would attract interest at 14% per annum in default of payment pursuant to Rule 7 of the *Advocates (Remuneration) Order, 2009*.
5. In opposition to the Application, the Client filed Grounds of Opposition dated 23rd September 2022, as well as a Replying Affidavit sworn by Martha Mutoro.
6. In its opposition, the Client contended that interest on the Advocate's fees at 14% should be from the date the Advocate sent the 'correct fee note', or when the Client became aware of the 'correct fee note' being the Bill which is in accordance with the sums awarded by the taxing officer in a certificate of costs.
7. This was similarly the holding in *Njogu & Company Advocates v. Kenya National Capital Corporation* [2006] KEHC 901 (KLR) and *Lubullellah & Associates Advocates v N K Brothers Limited*.
8. The Client stated that a consent was recorded on 2nd July 2019 and it made payment of the taxed costs on 5th August 2019 within the period provided by section 7 of the *Advocates Act*. Further that the Advocate has not brought the instant Application in good faith having served it upon the Client on 22nd September 2022. Which was about 3 years from the date when payment of the taxed bill was made and 2 years from when he filed the Application. On the basis of that opposition, the Client prayed that this Application be dismissed with costs.

Analysis and Determination

9. In this case, the Advocate's fees were settled by the Client on 5th August 2019 pursuant to a consent entered between the parties on 2nd July 2019. The Advocate now seeks interest on its costs from the date on which it sent the Client the Bill for the services it rendered until it was paid. While the Client argues that a consent was recorded on 2nd July 2019 and it made payment of the taxed costs on 5th August 2019 within the period provided by Rule 7 of the *Advocates Remuneration Order*.
10. Rule 7 of the *Order* states as follows:

“ 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 that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”
11. In *D. Njogu & Company Advocates v. Kenya National Capital Corporation* the learned Judge observed as follows:

“ In my considered view, it would be wrong to calculate interest from the date when the bill was sent to the client, regardless of the fact that such a bill was then watered down through taxation. If clients had to pay interest regardless of subsequent reductions on their bill, advocates would not have the incentive to charge the correct fee notes on the first occasion. It is for that reason that I hold, that the date from when interest should be calculable should be pegged to the date when the advocate sends the correct feenote.

“ And by the “correct fee note” I mean the bill which is in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client does not dispute, or the bill which is in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.”



12. I concur with the learned Judge. The date from which interest should be calculated ought to be the date when the Advocate sends the correct fee note. Which in this case is when the parties entered into a consent on the fees to be paid by the Client.
13. In this case, the Advocate sent a fee note to the Client on or about 17th January 2013. Consequently, the parties entered into the consent on 2nd July 2019, whereby the Advocate's Bill of Costs was agreed Ksh 839,388=. The Client settled the agreed costs on 5th August 2019. Which is within the period stipulated under Rule 7 of the *Advocates Remuneration Order*.
14. The upshot of the foregoing is that this Application is without merit as there is no basis for awarding the Advocate interest on those costs. Consequently, the Application is hereby dismissed. With each party bearing its costs.

DATED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF APRIL 2025.

PROF (DR) NIXON SIFUNA

JUDGE

