



Muriu Mungai & Company Advocates v China Civil Engineering Construction Corporation (K) Limited (Miscellaneous Application E368 of 2016) [2025] KEHC 12114 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 12114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E368 OF 2016
F WANGARI, J
APRIL 3, 2025**

BETWEEN

MURIU MUNGAI & COMPANY ADVOCATES APPLICANT

AND

**CHINA CIVIL ENGINEERING CONSTRUCTION CORPORATION (K)
LIMITED RESPONDENT**

RULING

1. The ruling is in respect of two applications. The Application by the Advocate/ Applicant is the Notice of Motion dated 03/06/2024. The application seeks the following orders: -
 - a. That judgment be entered for the Advocate/ Applicant for the sum of Kshs. 12.771,260/= as stated in the Certificate of Taxation dated 30/05/2024.
 - b. That interest on (a) above be awarded at court rates of 14% per annum from 20/05/2026 till payment in full.
 - c. That costs of this application be provided for.
2. The Respondent filed Grounds of Opposition dated 24/02/2025 stating that the Advocate has not provided reasons as to why they are entitled to interest. The Respondent said that if interest was to be paid, it should run from the date the Bill of Costs was re-taxed, failure to which the award would be an impediment to access to justice.
3. The other application was the Notice of Motion dated 15/05/2024 by the Client/ Respondent seeking the following orders;
 - a. Leave to appeal against the Ruling and Order of the Court delivered on 02/05/2024 re-taxing the Bill of Costs at Kshs. 10,968,750/=



- b. Costs be provided for.
4. The Advocate filed Grounds of Opposition dated 03/06/2024 stated that there was no reason given for the appeal and that it has not been shown that the appeal raised arguable points that demand the input of the Court of Appeal. The Advocates would be denied their fees which has been pending since year 2016.
5. The court directed that both applications be disposed off by way of written submissions. Both parties complied by filing their consolidated rival submissions which I have perused and considered.

Analysis and Determination

6. I will start with the Advocate's application dated 03/06/2024. Having considered the application, the supporting affidavit, the response and the submissions thereto, the issues for determination are;
 - a. Whether the application is meritorious;
 - b. What is the order as to costs?
7. On the first issue, taxation was done in this miscellaneous file. No reference was filed against the Certificate of Costs as it was as a result of a ruling by this court where costs were taxed at Kshs. 10,968,750/= . What is required of the court is to enter judgment, the Certificate of Costs having not been set aside. I find that the Applicant rightfully sought for entry of judgment in this file.
8. The application is brought under Section 51 (2) of the *Advocates Act* 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."
9. The Certificate of Costs having been issued, this court is to enter judgment as prayed.
10. In regard to the application dated 15/05/2024 by the Client/ Respondent, it has been submitted by the Client/ Respondent that the principal sum of Kshs 12,771,260/= had been paid to the Advocate and what remained was the issue of interest. It was submitted that that should leave to appeal be denied, the Client would suffer substantial loss as the taxed amount was manifestly excessive, so as to amount to an error in principle.
11. The Client relied on the case of *Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another* [2014] eKLR *inter alia* in support of its case to be granted leave to appeal, as the denial of leave would be an impediment to access to justice.
12. The Advocate filed the Grounds of Opposition dated 03/06/2024 stating that here was no reason given to have the court exercise its discretion to grant leave of appeal, and that the intended appeal did not raise any arguable points as the Court of Appeal will hardly be drawn into disputes on quantum. It was prayed that the application be dismissed with costs.
13. The client's main issue is the award of interest having settled the Principle amount. This court exercised its discretion by awarding interest as per Rule 7 of the *Advocates Remuneration Order*. The Client submits that the section is not in mandatory terms, hence computation of interest is discretionally. Reliance was made *inter alia* the case of *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR.



14. Based on the above, I find that the Client has established a *prima facie case* that the appeal has arguable points and shouldn't be locked out from further access to justice. I therefore allow that application but on conditions to be given hereunder.
15. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others* [2013] eKLR. In the present circumstances, each party to bear its own costs.
16. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
 - a. That the dated 03/06/2024 has merits and is allowed as prayed.
 - b. The Principle amount of Kshs. 12,771,260/= having been paid, interest at 14% p.a with effect from 20/05/2016 remains as due to the Advocate.
 - c. In respect to the application dated 15/05/2024, leave is granted as prayed but on condition that the interest payable in (b) above be deposited in an escrow account in the names of both counsels on record within the next 30 days.
 - d. In default of (3) above, the Advocate is at liberty to execute for the interest due.
 - e. Each arty to bear its own costs.
 - f. Costs awarded to the Applicant

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 3RD DAY OF APRIL, 2025.

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F. WANGARI

JUDGE

In the presence of:

Advocate the Applicant

Advocate for the Respondent

M/s Salwa, Court Assistant

