



Kinyanjui Njuguna & Co. Advocates v Xplico Insurance Co. Limited (Miscellaneous Application E124 & E125 of 2021 (Consolidated)) [2024] KEHC 1254 (KLR) (14 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E124 & E125 OF 2021 (CONSOLIDATED)
PN GICHOHI, J
FEBRUARY 14, 2024**

BETWEEN

KINYANJUI NJUGUNA & CO. ADVOCATES APPLICANT

AND

XPLICO INSURANCE CO. LIMITED RESPONDENT

RULING

1. Before this court is a Notice of Motion dated 11th November 2022 brought under Order 51 Rule 1 of the Civil Procedure Rules, Section 51(2) of the Advocates Act (Cap 16), Order 7 of the Advocates (Remuneration) Order (Under Section 48) of Cap 16. The Applicant seeks orders that:-
 1. Spent.
 2. This matter be consolidated with Nakuru H. C. Misc Civil Application No. 125 of 2021.
 3. Pursuant to prayer 2 above, judgment/decree be entered for Kshs. 264, 870 being made up of:- Kshs. 156, 560/= in Nakuru H. C. Misc Civil Application No. 124 of 2021. Kshs. 108,310/= in Nakuru H. C. Misc Civil Application No. 125 of 2021.
 4. Interest be provided for at Kshs. 14% per annum from 27th April, 2020 until payment in full.
 5. Costs of the application be provided for.
2. The grounds are on the face of the Application supported by the Affidavit sworn by Kinyanjui Theuri Advocate on 11th November, 2022. He depones that the Applicant's bills of costs in the above matters have since been taxed and Certificate of Taxation issued but the Respondent has continually neglected/ and /or failed to pay legal fees despite demand and notice by the Applicant.



3. He further depones that the Respondent never filed any response to the said bills of costs despite service. Further, the Applicant depones that the Respondent does not dispute the fees and that the Respondent 's financial liquidity is in question thus necessitating this Application.

Determination

4. The Affidavits of Service on record show that the Respondent was served but it did not respond. This Application is therefore unopposed.
5. As regards the prayer for consolidation of the suits, a perusal of the two files show that the said bills were taxed individually in the respective files. Further, the record shows that on 27th September 2021, the firm of Mugwe & Co. Advocates filed a Notice of Appointment dated 13th September, 2021 in respect of each of the two files.
6. Further, the records show that on 8th October 2021, the Respondent also filed its submissions dated 4th October 2021 in respect of each of the two files opposing some of the items in the respective Bills of Costs.
7. As per the Taxing Officer's Ruling on Taxation dated 25th January 2022 in respect of Nakuru H. C. Misc Civil Application No. 124 of 2021, the Bill of Costs was taxed at Kshs. 156, 560/= and a Certificate of Costs issued on 25th October 2022 issued.
8. Likewise, and vide Ruling dated 25th January 2022, the Taxing Officer taxed the Bill of Costs in Nakuru H. C. Misc Civil Application No. 125 of 2021 at Kshs. 108,310/= and a Certificate of Costs issued on 25th October, 2022. For expediency, and noting that these two files have been moving hand in hand, this Court finds it just to consolidate the two for purposes of this riling as prayed.
9. The Respondent has not attended this Court in respect of the matters the subject of this Ruling. Section 48 (3) of the [Advocates Act](#) provides that:-

“Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.”
10. There has been no dispute as to the retainer and there has been no reference to the ruling on taxation. The two Certificates of Taxation herein have not been set aside or altered by this Court and therefore final pursuant to Section 51 (2) of the [Advocates Act](#) which 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.”
11. The Applicant is entitled to interest at the rate of 14% under Paragraph 7 of the [Advocates \(Remuneration\) Order](#) which provides that:-

“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.”



12. The Applicant seeks that interest to run from 27th April 2020. To the letter dated 27th April , 2020 notifying the Respondent on the entry of judgment in Nakuru CMCC No. 648 of 2017 was a demand by the Applicant to the Respondent to pay legal fees for Kshs. 94,950/= which he said was due. The was Advocate /Client Bill of Costs had not even been presented before court for taxation. The Application dated 11th November, 2022 is therefore allowed in the following terms:-

1. Nakuru H. C. Misc Civil Application No. 125 of 2021 be and is hereby consolidated with Nakuru H. C. Misc Civil Application No. 124 of 2021.
2. Judgment be and is hereby entered in favour of the Applicant as against the Respondents in the total sum of Ksh. 264, 870/= together with interest thereon at fourteen (14%) per cent per annum calculable after Thirty (30) days from the date the Bill of Costs was served Respondent until payment in full.
3. The Applicant is allowed to execute the same as against the Respondents.
4. Costs of the Application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU (VIRTUALLY) THIS 14TH DAY OF FEBRUARY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Matoke for Ms Odhiambo for the Applicant

N/A for the Respondent

Lauren Njiru, Court Assistant

