



REPUBLIC OF KENYA



Mwangangi Nzisa & Associates Advocates v Xplic Insurance Company Limited (Miscellaneous Civil Application E041 of 2023) [2024] KEHC 2742 (KLR) (12 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL APPLICATION E041 OF 2023**

**F GIKONYO, J
MARCH 12, 2024**

BETWEEN

MWANGANGI NZISA & ASSOCIATES ADVOCATES APPLICANT

AND

XPLICO INSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The applicant has moved this court vide notice of motion dated 08/09/2023 and filed on 21/09/2023 seeking the following orders: -
 1. That this honourable court be pleased to enter judgment in favour of the applicant herein in terms of the certificate of taxation dated 6th September 2023 in the sum of Kshs. 128,302.00
 2. That subject to prayer I above, this honourable court be pleased to issue a decree above for the Kshs. 128,302.00 plus interest at the rate of 14% per annum from 17th August 2023 until payment in full.
 3. That the cost of the application be provided for.
2. The application is based on the grounds set out on the face of the application and the supporting affidavit sworn by Mwangangi Nzisa Kitheka on 08/09/2023. The application is premised on Order 51 Rule 1 of the *Civil Procedure Rules*, section 51(2) of the *Advocates Act*, and Order 7 of the *Advocates (Remuneration) Order* (under section 48) of Cap 16.
3. The applicant's case is that it filed its bill of cost dated 06/06/2023 in the matter herein which bill of cost has since been taxed. Pursuant to the ruling of the taxing master on 17/08/2023 a certificate of taxation dated 06/09/2023 has since been extracted and issued.
4. The applicant argued that the respondent has continually neglected and/or failed to pay legal fees duly earned despite demand and notice by the applicant. The respondent is facing a liquidity crisis and the



recovery of funds is in jeopardy. The instant application is necessitated by the fact that the financial liquidity of the respondent is in question.

5. The applicant contends that an advocate is legally entitled to fees duly earned in the course of service in line with the *Advocates' Remuneration Order*. The respondent does not dispute the fees in any event nor does it dispute the issue of retainer.
6. The applicant contends that the instant application is made in the sole interest of justice and due realization of legal fees earned by the advocate/applicant.
7. The applicant averred that the interest is payable at 14% per annum from the date of service of notice
8. The applicant contends that if the court fails to grant the orders sought herein the applicant is likely to suffer gross prejudice as the financial liquidity of the respondent is in question. Further, if the orders sought are not granted the applicant stands to be left with fruits of taxation which he cannot enjoy in any way whatsoever as the respondent is facing an acute financial liquidity crisis and may go under at any juncture.
9. The applicant contends that it has demonstrated through evidence that is entitled to the orders sought. The applicant prays for judgment as requested plus interest.
10. The respondent has not filed any replies.

Analysis And Determination

11. The Applicant filed an Affidavit of Service dated 24/10/2023 by Aaron Mwendwa proving that the Respondent was served with the hearing Notice of the Application herein. The Respondent, although served, did not attend or send a representative for the hearing of the motion. The Application is therefore not opposed.
12. This court has considered the application, grounds thereof, supporting affidavit, and annextures.

Issues

13. The issue for determination is
 - i. Whether judgment should be entered on the basis of the Certificate of costs herein.
14. The applicable law is found at Section 51(2) of the *Advocates Act* which reads 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.”
15. The above provision was explained in the case of *Musyoka & Wambua Advocates versus Rustam Hira Advocate* (2006) eKLR that: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....



16. Ordinarily, the court will enter judgment under Section 51(2) of the *Advocates Act* as long as:
- a. the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
 - b. the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
 - c. there is no dispute on the retainer.
17. The Certificate of Taxation dated 06/09/2023 has not been set aside or impugned by any court.
18. Where the conditions in section 51 of the Act are satisfied, the certificate deemed to be final. See *Lubulellah & Associates Advocates versus NK Brothers Limited* [2014] eKLR where the court observed that;
- “The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”
19. Accordingly, judgment is entered for the applicant against the Respondent for the sum certified in the certificate of costs.

Interest

20. The Applicant has not tendered any evidence that it raised the issue of interest with its client when tendering the Bill of Costs.
21. Rule 7 of the *Advocates (Remuneration) Order* stipulates that:
- “An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiry of one month from the delivery of his bill to the client, provided such claim for interest is raised before the amount has been paid or tendered in full.”
22. Some courts have held that, the court in its discretion determines when interest ought to run. See the case of *Otieno Ragot & Company Advocates vs Kenya Ports Authority* [2021] eKLR it where it was held that, although Rule 7 entitled an advocate to claim interest, the time from when interest would run was not stipulated and was therefore, left to the discretion of the court.
23. In the case of *D. Njogu & Company Advocates vs Kenya National Capital Corporation* [2006] eKLR, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that the “correct fee note” meant a bill that was in accordance with the terms upon which the advocate had contracted with the client, or the bill that the client did not dispute, or a bill that was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.



24. A respectful view of Rule 7 of the [Advocates Remuneration Rules](#) is that, interest may be chargeable at fourteen (14%) percent per annum, ‘from the expiry of one month from the delivery of his bill to the client.’ This is the reference point on when interest would be calculable. Thus, interest may not accrue before one month had expired, from the time when the bill was delivered to the client.
25. That is not the end of the matter. Interest does not become automatically chargeable after the lapse of one month from the date when the bill was served. Rule 7 of the [Advocates Remuneration Rules](#) provides that interest is chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.
26. It was not clear to this court when the bill was submitted to the Client for settlement. Although the Advocate claimed to have served the application and hearing upon the Client on 29/09/2023, it did not attach any document to prove the bill was served. Be that as it may, this court notes from the proceedings before the Taxing Master that the Client was not represented on 20/07/2023 when the parties first appeared before the Taxing Master. They were not present when she delivered her decision on 17/08/2023.
27. The Client was, however, aware of the Advocate- Client Bill of Costs on 29/09/2023. The Bill of Costs has remained unpaid to date.
28. Bearing in mind the holding in [D. Njogu & Company Advocates vs Kenya National Capital Corporation](#) [2006] eKLR, this court concludes that the one (1) month envisaged in Rule 7 of the [Advocates Remuneration Order](#) lapsed on 29/10/2023. Interest would thus accrue on the certified costs from 29/10/2023

Conclusions

29. In the upshot, this court makes the following findings and determinations;
 - i. The application succeeds substantially.
 - ii. That judgment is entered for the applicant and against the respondent for the sum of Kshs.128,302/= in the Certificate of Taxation dated 6th September 2023. A decree to issue accordingly.
 - iii. Interest thereon at fourteen (14%) percent per annum calculable from 29/10/2023, being the date of expiry of one month from the date when the application was served upon the Client.
 - iv. There shall be no order as to costs.
30. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 12TH DAY OF MARCH, 2024.

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HON. F. GIKONYO M.

JUDGE

In the Presence of: -

C/A: Mr. Otolo

Mwangangi Nzisa for Applicant – Present



Respondent - Absent

