



REPUBLIC OF KENYA



**Majune Kraido t/a Kraido & Co. Advocates v Faulu Micro Finance Bank Ltd (Miscellaneous Civil Application 10 of 2017) [2024] KEHC 2421 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2421 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION 10 OF 2017**

**JRA WANANDA, J**

**MARCH 8, 2024**

**BETWEEN**

**MAJUNE KRAIDO T/A KRAIDO & CO. ADVOCATES ..... APPLICANT**

**AND**

**FAULU MICRO FINANCE BANK LTD ..... RESPONDENT**

**RULING**

1. This matter is related to two other actions, namely, Eldoret High Court Miscellaneous Civil Application No. 7 of 2017 and 11 of 2017. As agreed with the Counsels on record, I had directed that the ratio decidendi or holding that shall be reached herein shall then also apply to or be adopted mutatis mutandis in the said two other related matters.
2. The Application before Court is the Notice of Motion dated 11/04/2022. The prayers sought are as follows:
  - i. That Judgment be entered for the sum of Kshs 33,700/- plus interest at 14% per annum from 20<sup>th</sup> September 2015 until payment in full, and a decree do issue.
  - ii. That the costs of this Application be awarded to the Applicant.
3. The Application is filed through Messrs Kraido & Co. Advocates and is stated to be brought under Sections 51(2) of the *Advocates Act*, Cap. 16. The grounds of the Application are as set out on the face thereof and the same is supported by the Affidavit sworn by Majune Kraido Advocate.
4. In his Affidavit, the Advocate deponed that the Bill of Costs herein was on 12/10/2018 taxed at Kshs 33,700/-, that the Certificate of Taxation has not been set aside or altered, that the retainer is not disputed, that he served demand for payment of the legal costs on 20/08/2015 and raised the claim for interest before the amount of the Bill was paid, and that it is necessary that the certificate of costs given on 12/10/2018 be converted into a decree and Judgment be entered in his favour together with interest.



## Response to the Application

5. The Respondent opposed the Application vide the Replying Affidavit filed on 13/03/2023 through Messrs Omwenga & Co. Advocates and sworn by one Maurine W. Kahiho who described herself as the Legal Officer at the Defendant. He deponed that the Applicant is claiming payment on an amount that has already been paid in full, that the Ruling on the Advocate-Client Bill of Costs was delivered on 12/10/2018 in the absence of the parties, that the Respondent came to know of the Ruling on 5/05/2022 when the Applicant served the Respondent's Advocates with the Certificate of Costs for 3 files including the instant one, that on 17/05/2022 the Respondent paid the entire amount for the 3 matters amounting to Kshs 205,542/-, that the cheque was released to the Applicant together with the consent to mark the matter as settled, that later the Applicant started demanding for interest, that the costs were paid within a period of 30 days from the date when the Respondent's Advocates were notified of the costs, that Rule 7 of the Advocates Remuneration (Amendment) Order provides a grace period of 30 days within which to pay, that the amount was paid before the lapse of such 30 days, that interest on the assessed costs accrues after expiration of 1 month from the date of delivery of the Certificate of Costs, that the Applicant is in the habit of filing similar Applications after having been paid by his client and that he is therefore a frivolous Applicant.

## Hearing of the Application

6. Pursuant to directions given, the Application was canvassed by way of written Submissions. The Applicant filed his Submissions on 25/10/2023 while the Respondent filed on 2/05/2023.

## Appellant's Submissions

7. Counsel for the Applicant cited Section 51(2) of the *Advocates Act* on entry of Judgment on Certificate of Costs and Rule 7 of the Advocates (Remuneration) Order in respect to accrual of interest on taxed costs and submitted that the Applicant's Bill is dated 20/08/2015 and given that the mode of delivery was email, delivery was instant, that as per Rule 7 aforesaid, 30 days lapsed on 19/09/2015 or thereabouts, and that therefore, time for calculating interest on the taxed amount should run from 20/09/2015 until 25/09/2022 when the Respondent paid the taxed costs by the cheque dated 17/05/2022. Counsel argued that Rule 7 does not apply to delivery or service of the certificate of taxation as the Respondent argues, that the Rule applies only to the Advocate's demand before action and makes it mandatory to issue demand in block or itemized bill after which it is only after lapse or expiry of 30 days that the Applicant's Advocate may apply for taxation of the Bill, that non-compliance with Rule 7 would definitely render the Application for taxation of the Bill of Costs under Rule 13 thereof premature.
8. Counsel added that the Applicant had complied with Rule 7 on raising the claim for interest "before the bill shall have been paid or tendered in full", that the Applicant had advised the Respondent to pay the taxed costs and interest but the Respondent preferred to hear from its Advocates only before complying, and that by email of 5/05/2022 the Applicant forwarded the demand letter and the Certificate of Costs to the Respondent's Advocates. He submitted that although interest on legal costs is provided for in the *Advocates Act*, the same is widely misunderstood and least appreciated by even practitioners. On the allegation that the Applicant was "litigious", Counsel submitted that he does not take offence to use of that adjective against him since to litigate on the issue of interest will enable him to not only earn his lawful entitlement but also help to grow jurisprudence on the issue.
9. Counsel submitted further that the Respondent has placed much reliance on the decision in Kakamega HC Miscellaneous Application No. 74 of 2017, Majune Kraido t/a Kraido & Co. Advocates vs County



Government of Kakamega, that however that authority is distinguishable from the present case, that the Learned Judge in that case strangely took a defensive position and view which position was not justified by the evidence on record, and that most probably “the breakfast theory of jurisprudence” came into play during the writing of the Ruling. In 3 whole further paragraphs, Counsel continued to fault the Judge’s decision in the said case, described it as bad law and submitted that this Court should not be persuaded by the glaring denial of justice in that decision and should, instead, formulate its own jurisprudence on the issue.

### **Respondent’s Submissions**

10. On his part, Counsel for the Respondent reiterated that the Applicant served the Certificate of Costs on 5/05/2022 via email, that the same was then forwarded to the Respondent on the following day - 6/05/2022, that the Respondent paid the entire amount on 17/05/2022, that a forwarding letter was sent enclosing the cheque and consents to mark the matters as closed, and that the same was paid within the 30 days period provided in law. He cited Section 51(2) of the *Advocates Act* and submitted that it has never been in contention that the Applicant was in an Advocate-Client relationship with the Respondent and therefore entitled to legal fees, that however the amount that the Applicant seeks for Judgment to be entered has already been settled, that the Applicant is therefore not entitled to the Judgment, that doing so would be futile and the Judgment reduced to a mere academic exercise, that judicial time is precious and scarce and must not be wasted. He cited the case of Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR. On lack of a basis to enter Judgment, Counsel reiterated his reliance on the case of Majune Kraido t/a Kraido & Co. Advocates vs County Government of Kakamega (supra).
11. Counsel reiterated further that Rule 7 is to the effect that if the costs remain unpaid for a period of 30 days upon service, then the Advocate may charge interest. He cited the case of Amondi & Co. Advocates v County Government of Kisumu [2021] eKLR. He also cited the case of D. Njogu & Co. Advocates vs Kenya National Corporation [2006] eKLR which, he submitted, held that interest ought to run from the date the correct fee note was sent to the client. Counsel therefore urged the Court to hold that time started running when the Applicant served the Certificate of Costs, that the Respondent received the Certificate of Costs on 6/05/2022 after the same was served upon their Advocates, that the Respondent made the payments within the 30 days provided in law, and that therefore the Applicant is not entitled to any interest.

### **Analysis and Determination**

12. Upon examination of the record and the pleadings filed, including the Affidavits and Submissions, I find the issues that arise for determination herein to be as follows:
  - i. Whether the Applicant is entitled to interest under Rule 7 of the Advocates Remuneration Order on the already paid costs arising out of the Applicant’s Advocate-Client Bill of Costs.
  - ii. Whether therefore Judgment should be entered on the Certificate of Costs
13. I now proceed to determine the above issues.



**i. Whether the Applicant is entitled to interest under Rule 7 of the Advocates Remuneration Order on the already paid costs arising out of the Applicant’s Advocate-Client Bill of Costs.**

14. On entry of Judgment on the amount taxed out of an Advocate-Client Bill of Costs, 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.”

15. On accrual of or entitlement to interest thereon, Paragraph 7 of the Advocates Remuneration Order then provides 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.” [emphasis mine]

16. My understanding of the above explanation is that to entitle an Advocate to pursue interest on his fees, then under Rule 7 aforesaid, prior to filing his Bill of Costs in Court, the Advocate must have first served the proposed Bill upon the Client. If the Client does not pay the Bill within 30 days and as a result, the Advocate moves further and formally files the Bill in Court, then the Advocate shall become entitled to charge interest, at the rate of 14% per annum, on the amount that shall eventually be taxed and awarded by the Court. The only rider is that the claim for interest must have been raised by the Advocate before the amount in the Bill has been paid in full.

17. In connection to the above, in the case of *Kithi & Company Advocates vs. Menengai Downs Limited* [2015] eKLR, Mabeya J, stated as follows:

“13. I will start with interest. There seems to be a misconception by legal practitioners on the award of interest on taxed costs. An Advocate is entitled to interest on the amount taxed on an Advocate/client Bill of Costs. The rate of interest awardable is 14% per Annum applicable from 30 days after the date of service of either the Block Fee Note or the Bills of Costs. This is clearly set out in Rule 7 of the Advocates Remuneration Order which provides: -

.....

1. In view of the foregoing, once a judgment is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For an Advocate to be able to recover this, there must be evidence on record on the date when the bill was served upon the client. ....” [Emphasis mine]

18. This therefore lays to rest the Respondent’s erroneous argument that the 30 days referred to in Rule 7 means 30 days after delivery of the Certificate of Costs. The correct position is that it is 30 days from delivery of the proposed Bill of Costs to the Client, prior to filing it in Court, not the Certificate of Costs.



19. In this case, it is not in dispute that prior to filing the Bill of Costs, the Advocate delivered or served the proposed Bill upon the Client. The Bill is dated 20/08/2015 and according to the Applicant, it was served on the same date. The Respondent has not disputed this alleged date of service. The Bill was computed at the sum of Kshs 189,190/-. 30 days therefore lapsed on or about 20/09/2015 by which time the Client had not paid the Bill. Consequently, the Advocate moved further and filed the Bill in Court on 3/01/2017 for taxation. The Bill was then taxed and awarded by the Court at the sum of Kshs 33,700/- vide the Ruling delivered on 12/10/2018.
20. Up to this point, the Applicant is still safely within his entitlement to charge interest. However, a spanner is thrown into the works by virtue of the requirement that “provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full”. Did the Applicant surmount this hurdle? Did he raise the issue of interest before payment of the costs was made?
21. In connection to this point, in the case of Jackson Omwenga & Co. Advocates vs. Everest Enterprises Ltd [2017], L. Njuguna J, remarked as follows:
- “I have perused the Advocates Remuneration (Amendment) Order, Rule 7. Under the said rule, an advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.
- To comply with that provision, the applicant must prove two things:
- (a) That one month has expired from the time he delivered his bill to the client;
- (b) He has raised his ‘claim’ for interest before the amount of the bill has been paid or tendered in full.” [emphasis done]
22. I have looked at the said demand, letter or notice dated 20/08/2018 that was served upon the Respondent and which was computed at the sum of Kshs 189,190/-. I have carefully perused the same and cannot find any claim for interest therein or any mention thereof. There is reference to 16% on the sub-total but I have understood that to refer to the VAT element.
23. It is not in dispute that thereafter, upon delivery of the Ruling on 12/10/2018, the Applicant extracted the Certificate of Costs and forwarded it to the Respondent vide the email sent on 5/05/2022. It is to be noted that this date is almost 4 years after the taxation. I have also not come across any mention of accrual of interest in this email. Be that as it may, the Respondent complied and by the letter dated 25/05/2022, forwarded the settlement cheque together with consents to be executed to mark the matter as settled. Upon receipt of the cheque and letters, the Applicant was dissatisfied and shot back as follows:
- “Thank you for your letter dated 25<sup>th</sup> May 2022 and the enclosures therewith. Where is the interest? Kindly, advise your client to pay the same as calculated and advised .....”
24. From the exhibits presented, the above is the very first time that the Applicant raised any demand for interest. Although the letter demands that “kindly, advise your client to pay the same as calculated and advised, I have not “seen” any prior communication indicating that accrual of interest had at any prior time, been “calculated and advised” as alluded. There being no evidence before me that the Applicant had raised any claim for interest before the amount of the bill was paid or tendered in full, the claim for interest cannot succeed.



25. The principal amount (costs taxed) having been paid in full and this Court having found that interest thereon is not payable, it is futile to enter Judgment on the Certificate of Costs in terms of Section 51 of the of the Advocates Act.

**Final Orders**

26. The upshot of my findings above is that the Application dated 11/04/2022 fails. The same is duly dismissed with costs to the Respondent.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 8<sup>TH</sup> DAY OF MARCH 2024**

.....

**WANANDA J.R. ANURO**

**JUDGE**

