



**Owiti Otieno, Ragot Advocates v UAP Insurance Company Limited (Miscellaneous Civil Application E098 of 2022) [2024] KEHC 3709 (KLR) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION E098 OF 2022**

**RE ABURILI, J  
APRIL 15, 2024**

**BETWEEN**

**OWITI OTIENO, RAGOT ADVOCATES ..... APPLICANT**

**AND**

**UAP INSURANCE COMPANY LIMITED ..... RESPONDENT**

*(Arising from professional services rendered by the Applicant/Advocate to the Respondent/Client in the Original Nyando PMCC No. 111 of 2015)*

**RULING**

1. This Ruling determines the Advocate/Applicant's application dated 20<sup>th</sup> September 2023 seeking for orders that the certificate of costs dated 7<sup>th</sup> October 2022 in the sum of Kshs.133,275 be adopted as judgment of this Court and a decree be issued. Secondly, that the interest of 14% p.a from 6<sup>th</sup> October 2021 be awarded. The Applicant also prays for costs of the application.
2. The application is predicated on the grounds on the face thereof and which grounds are that the Respondent retained the Applicant advocate to represent the 1<sup>st</sup> Defendant in Nyando PMCC No. 111 of 2015 and the Applicant/Advocate did represent the Client 1<sup>st</sup> Defendant but that owing to non-payment of legal fees, the advocate filed a bill of costs which was taxed on 7<sup>th</sup> October 2022 in the sum contained in the certificate of costs which sum of money has neither been set aside nor altered by the court hence this claim.
3. Further, that the Respondent was served with the demand to settle on 6<sup>th</sup> September 2021 hence the demand for interest from 6<sup>th</sup> October 2021 one month after presentations of the final fee note as stipulated in Rule 7 of the *Advocates Remuneration Order*.
4. In the supporting affidavit sworn by Linda Agatha Oduor Advocate, authorised by the firm of Owiti Otieno & Ragot Advocates, she annexes copies of the instructions letter marked as L.A-1;



Memorandum of Appearance in the suit where the advocate represented the Respondent's insured's interests marked as L.A-2, Amended Advocate/a client bill of costs marked as L.A-3; Certificate of Costs assessed Marked as L.A-4; final fee note and email letter of 6<sup>th</sup> September 2021 and response by the client via email dated 27<sup>th</sup> September 2021 as proof of receipt of the final fee note.

5. The Respondent did not file any replying affidavit or grounds of opposition to the application which was argued orally.
6. The Applicant's counsel, Ms. Anuro submitted reiterating the prayers in the Notice of Motion and relying wholly on the supporting affidavit, highlighting that the application was not opposed.
7. Mr. Ng'anga counsel for the Respondent submitted that there is an application to set aside the taxation and that the client denies instructing the advocates to act for him in the Nyando matter and that it instructed the firm of Odhiambo Owiti & Company Advocates with whom they had a service level agreement. Counsel referred to the instructions dated 9<sup>th</sup> July 2015 on who was instructed, being Kennedy Owiti Advocate.
8. It was submitted that the Ruling on taxation never considered their grounds of opposition denying the retainer hence they were filing an application to set aside the taxation.
9. In a rejoinder, Ms. Anuro submitted that the grounds of opposition referred to regarded the taxation and that no issue of retainer was raised. That the Respondent only challenged specific items in the bill of costs. That the retainer issue could only have been raised at the taxation stage hence the same is being raised too late as no reference has been filed or opposition raised to the application herein.

#### **Determination**

10. I have considered the application dated 20<sup>th</sup> September 2023, the grounds, supporting affidavit, annexures and the oral submissions for and against the application.
11. Section 51 of the [Advocates Remuneration Order](#) is clear that a certificate of costs is final and unless set aside or is altered, what remains is for this court to enter judgment and issue decree in terms of the assessed or taxed costs as per the issued Certificate of Costs or, of Taxation.
12. The section 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.”
13. In this case, there is a valid Certificate of Costs dated 7<sup>th</sup> October 2022. There is no reference filed challenging the taxation and neither is there Any application challenging the retainer.
14. That being the case, the Respondent/Client cannot just pop up at this stage and claim that there was no retainer, having fully participated in the taxation proceedings and even filed grounds of opposition to the specific items in the bill of costs filed by the Advocate.
15. In addition, time for filing a Reference under Paragraph 11 of the [Advocates Remuneration Order](#) lapsed 14 days after the taxation as stipulated in Paragraph 11 of the [Advocates Remuneration Order](#) and therefore the claim that the Respondent is filing an application to set aside the taxation on the ground that their grounds of opposition or their submissions were not considered is neither here nor there.



16. Further, I observe that there is no dispute that the advocate who was instructed by the Respondent, Mr. Kennedy Odhiambo is the advocate who issued the proforma request note and there is no dispute that the same advocate simply changed law firms from Odhiambo Owiti & Company Advocates to Owiti, Otieno & Ragot Advocates and in the absence of evidence that Mr. Kennedy Owiti is not practicing in the firm of Owiti, Otieno & Ragot Advocates which firm has sought and obtained a certificate of costs which remain final, I find that the Respondent is applying procedural technicalities to delay settlement of the advocate's taxed costs, at the expense of substantive justice, which practice is abhorred by Article 159 of *the Constitution*.
17. Accordingly, I find the objection to retainer being an afterthought and not merited. It is dismissed.
18. On the merits of the interest sought at 14% per annum from 6<sup>th</sup> October, 2022 sought, Rule 7 of the *Advocates (Remuneration) Order* provides that: -

“ An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”
19. Courts have held that discretion lies with the Court to determine when interest ought to run. In the case of *Otieno Ragot & Company Advocates v Kenya Ports Authority* [2021] eKLR, 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.
20. In *D. Njogu & Company Advocates v Kenya National Capital Corporation* [2006] eKLR, it was 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 which the client did not dispute, or the bill which was in accordance with the sums awarded by either the taxing officer or by the Deputy Registrar in a Certificate of Costs.
21. This court takes the respectful view that Rule 7 of the *Advocates Remuneration Order* is clear that interest is chargeable at fourteen (14%) per cent per annum, from the expiration of one month from the delivery of the bill to the client. There is, therefore, a reference point, from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
22. Further, interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served upon the client. Rule 7 of the *Advocates Remuneration Order* provides that interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.
23. In the instant case, the Advocate served upon the Client a bill of costs dated 6/9/2022 and in that bill, he demanded for 14% per annum interest chargeable. Accordingly, I find and hold that the application herein dated 20<sup>th</sup> September 2023 merited. I grant prayer No. 1 and 2 of the Notice of Motion and enter Judgment for the Advocate in the taxed sum of Kshs.133,275 together with interest at 14% p.a from 6<sup>th</sup> October 2022 until payment in full.
24. Decree to issue forthwith.
25. To avoid escalation of further costs, each party shall bear their own costs of the application dated 20<sup>th</sup> September 2023.



26. Mention before the Deputy Registrar on 16<sup>th</sup> May 2024 to confirm settlement and for closure of the file.
27. Ruling to be typed forthwith.
28. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 15<sup>TH</sup> DAY OF APRIL, 2024**

**R. E. ABURILI**

**JUDGE**

