



**Owiti, Otieno & Ragot Advocates v Lake Victoria South Water Works Development Agency
(Miscellaneous Civil Application E102 of 2022) [2024] KEHC 3407 (KLR) (5 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E102 OF 2022**

RE ABURILI, J

APRIL 5, 2024

BETWEEN

OWITI, OTIENO & RAGOT ADVOCATES ADVOCATE

AND

**LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT
AGENCY CLIENT**

RULING

Intr

1. Vide Notice of Motion dated 28th September 2022, the Advocate/ Applicant herein Owiti, Otieno & Ragot Advocates sought for orders that the Certificate of Costs dated 18th August 2022 and issued on the 6th September 2022 for the sum of Kenya Shillings Three Hundred and Seventy-Five Thousand, Seven Hundred and Thirty-Five and Eighty Cents only (Kshs 375,735.80) be adopted as Judgment and Decree of this court together with interests at (14%) per cent per annum from the 13th August 2020 until payment in full. The Advocate also sought costs of the application.
2. Mr. Otieno David, an Advocate practicing in the firm of Owiti, Otieno & Ragot Advocates, swore an Affidavit on 28th September 2022 on behalf of the Advocates in support of the said application herein.
3. The Advocates averred that the Client instructed them to act on its behalf in the case Kisumu ELRC Cause No. 5 of 2020: *John Ochieng v Lake Victoria South Water Works Development Agency & 2 Others* which they ably did to its conclusion. It was their assertion that they prepared and forwarded a final fee note dated 13th July 2020 and that the same having remained unpaid by the client, were taxed in the sum of Kshs. 375,735.80 and a Certificate of Costs issued on the 18th August 2020.
4. They asserted that they were entitled to interest on costs and disbursements computed in the Bill of Costs at the rate of 14% per annum since the date of filing the Bill of Costs as contemplated in Rule 7 of the Amended Advocates Remuneration Order.



5. The applicants were categorical that the said Certificate of Costs had not been altered or set aside by the Court and they therefore urged this court to enter judgment in their favour.
6. Opposing the said application, the Client/Respondent filed a replying affidavit sworn by one Monica Obonyo on the 21st October 2022 in which she deposed that on the 14.9.2022, the client erroneously made a payment to the advocate in respect of Ksm Misc. No. 103 of 2022 that was pending hearing and determination of a reference before the High Court instead of Ksm Misc No. 102 of 2022 which is subject of these proceedings.
7. It was the client's contention that it made this clarification of the misdirected payment to the advocate/ applicant herein vide a letter dated 17.10.2022 and that the advocate had not denied having been paid Kshs. 375,735.80 the amount claimed herein, prior to the filing of this suit.
8. The client contended that it was in the interest of justice and fairness that the court deem money paid erroneously to the advocate in Ksm HCC Misc No. 103 of 2022 but meant for Ksm HCC Misc No. 102 of 2022 as having duly settled the advocate/client Bill of Costs and further that the advocate would not suffer any damage or loss because the amount paid in Ksm HCC Misc No. 103 of 2022 was similar to that which was to be paid in Ksm HCC Misc No. 102 of 2022.
9. It was contended further that the orders sought by the advocate were overtaken by events, the same having been filed long after the client had complied with the court order and therefore the instant application ought to be dismissed with costs.
10. The applicant's counsel relied on the grounds and affidavit in support of the application, urging this court to grant the prayers sought.
11. Mr. Migaliza counsel who appeared for the Client/respondent informed the court on inquiry that there was no reference filed and further that there was no dispute as to the retainer between the parties herein but that the dispute and issue for determination was on the interest.
12. The client submitted in opposition that section 51 (2) of the *Advocates Act* and Rule 7 of the *Advocates Remuneration Order* provide that no order or judgement on taxed bill of costs can be entered for the Advocate against a Client where certified or taxed bill of costs have been paid or tendered in full and further that interest of 14% per annum or otherwise on disbursements and costs can only be due after expiry of one month from the date the Bill of Costs is delivered to the client or date of delivery of taxation ruling.
13. It was submitted that the orders sought by the advocate had been overtaken by events as the same had been settled 14 days before the instant application was filed, not later than one month from the date of delivery of taxation ruling. Reliance was placed on the case of *Amondi & Co. Advocates v County Government of Kisumu* [2021] eKLR.
14. The client thus submitted that the instant application lacked merit and was an abuse of the court process and thus ought to be dismissed.

Analysis & Determination

15. I have considered the pleadings filed herein by both parties, the submissions by the client and the relevant law. The Advocates relied on the provisions of Section 51(2) of the *Advocates Act* Cap 16 (Laws of Kenya) which empowers the court to enter judgment on taxed costs in favour of an advocate.
16. They were also emphatic that Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at fourteen (14%) per cent per annum until payment in full. They relied on the case of



- Makbecha and Company Advocates v Central Bank of Kenya* [2020] eKLR where it was held that Rule 7 of the Advocates Remuneration Order entitles an advocate to charge interest above the normal or applicable rate of twelve (12%) per cent provided that the claim for interest was raised before payment or settlement of the advocate's bill of costs.
17. The Client also invoked Section 51 of the *Advocates Act* and Rule 7 of the Advocate's Remuneration Order.
 18. 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.”
 19. 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.”
 20. Having carefully considered the respective parties' pleadings and submissions, it is apparently clear that the Certificate of Costs that was issued by the Taxing Officer on the 6th September 2022 had not been set aside and/or altered. Indeed, there is no reference under Paragraph 11 of the Advocates Remuneration Order challenging the decision of the said Taxing Master. It was also evident that the Client was not opposed to the adoption of the taxed costs as a judgment sum.
 21. However, it was contended by the client and the contention remained rebutted and uncontroverted that on the 14.9.2022, the client erroneously made a payment to the advocate in respect of Ksm Misc. No. 103 of 2022 that was pending hearing and determination of a reference before the High Court instead of Ksm Misc No. 102 of 2022 which is subject of these proceedings and which amount was similar as that being claimed by the advocate herein. The client thus submitted that the instant application had been overtaken by events and ought to be dismissed.
 22. The advocate has not rebutted or denied that he was paid the taxed costs subject of this application as contended by the respondent client who has exhibited the payment advise slip as per the amended certificate of costs dated 18th August, 2022 and as clarified vide the attached letter of 5/10/2022 which was responded to by the advocate vide email of 17/10/2022.
 23. Accordingly, I find that the decretal sum of Kshs. 375,735.80 was settled by the client and therefore the only issue left for determination is whether to award the interest of 14% from the 13th August 2022 when the advocate presented its Bill of Costs to the client.
 24. Notably, several courts have held that the court has the discretion to determine when interest ought to run. In the case of *Otieno Ragot & Company Advocates v Kenya Ports Authority* (2017) 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.
 25. In the case of *D. Njogu & Company Advocates v 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 been contracted by 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.
26. Rule 7 of the *Advocates Remuneration Rules* 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 was 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.
 27. It is worth noting that interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served. Rule 7 of the *Advocates Remuneration Rules* provides that interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.
 28. In the instant case, the advocate sent the Interim Profoma Request Note to the client on the 13th July 2020 claiming fees totaling to Kshs. 717,000 but the same was taxed and a Certificate of Costs dated 18th August 2022 issued on the 6th September 2022 for the sum of Kenya Shillings Three Hundred and Seventy-Five Thousand, Seven Hundred and Thirty-Five and Eighty Cents only (Kshs 375,735.80), as per the amended certificate of costs. The client paid the said taxed costs via a disbursement dated 14.9.2022 which was eight days later.
 29. I therefore find that the advocate was not entitled to interest as provided under Rule 7 of the *Advocates Remuneration Rules*.
 30. The upshot of the aforementioned is that the application dated 28.9.2022 is found to have been overtaken by events lacks and the same is hereby dismissed with an order that each party bear their own costs of the application.
 31. This file is closed.
 32. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 5TH DAY OF APRIL, 2024

R.E. ABURILI

JUDGE

