



**Carolyn K.Muumbo & Co. Advocates v Mbuvi (Miscellaneous Application  
3 of 2017) [2024] KEHC 5209 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5209 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS APPLICATION 3 OF 2017**

**JN ONYIEGO, J**

**MAY 16, 2024**

**IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT**

**BETWEEN**

**CAROLYN K.MUUMBO & CO. ADVOCATES ..... APPLICANT**

**AND**

**MULU MBUVI A.K.A JOHN MULU MBUVI ..... RESPONDENT**

**RULING**

1. The applicant approached this court via a notice of motion dated 16.02.2024 under section 1A and 1B of the *Civil Procedure Act*, Order 22 Rule 18 and Order 51 of the *Civil Procedure Rules* and all enabling provisions of law. The application sought for orders as follows:
  - i. That the Honourable Court be pleased to give an interpretation of the Ruling dated 12.03.2020, specifically Order No. (iii) on the issue of the accrual interest payable on the amount taxed and give a clarification as to whether the words ‘the interest payable for the amount’ as used therein applies to the entire amount taxed, including the amount of Kes. 443,905.05 which had been deposited in court on 14.08.2019 minus the accrued interests.
  - ii. That out of abundance of caution, this Honourable Court be pleased to order the respondent to show cause why execution should not issue regarding the outstanding interest in the matter amounting to Kes. 66,585.80 which has been calculated @12% p.a from the date of taxation (i.e. 30.05.2018) till the date when the amount was deposited in court i.e. 14.08.2019 which is a period of 15 months.
  - iii. That costs of the application be borne by the respondent
2. The application is anchored on the grounds set out on the face of it and further supported by the affidavit of the applicant herein sworn on 16.02.2024. It was deponed that on 20.12.2017, she filed



an advocate-client bill of costs dated 20.12.2017 which was allowed and taxed at Kes. 810, 010/-. That the respondent felt aggrieved with the said ruling and filed a reference dated 02.08.2019 seeking stay of execution as well as review and /or variation and /or setting aside of the taxing master's decision dated 30.05. 2018.

3. That the prayer for stay of execution was therefore granted on condition that the respondent deposits Kes. 443,905 in court within seven days failure to which execution was to issue. It was deposed that the respondent complied with that court order on 14.08.2019 by depositing the said amount of Kes. 443,905.05/- in court.
4. It was deposed that the court via a ruling delivered on 12.03.2020, ordered that the balance amount payable to the applicant herein was Kes. 50,634 which was to be paid within a period of 14 days and in default, execution to issue. That the interest payable for the amount accrue from the date the taxing master taxed the bill.
5. The court was informed that on 06.12.2021, the respondent paid the amount of Kes. 50,634/- together with interest of Kes. 17,216/- thus the whole amount totaling to Kes. 67,850/-. That despite demand for the settlement of the accrued interest on the amount of Kes. 443,905 that had been deposited in court, the respondent failed and/or refused to oblige. This court was therefore urged to order the respondent to pay the interest accrued on the Kes. 443,905.05/- from the date of taxation (i.e. 30.05.2018) till the date when the amount was deposited in court (i.e. 14.08.2019).
6. The respondent in opposing the application herein filed a replying affidavit sworn on 11.03.2024 wherein it was deposed that the orders as issued by the court were not only specific but also clear in that the amount the court made reference to was Kes. 50,634/- hence not Kes. 443,905.05/-. That the position of the court from the said ruling was that the sum of Kes. 443,905.05/- which was already deposited and paid to the applicant were undisputed by the respondent and should the taxing master have made the correct tabulation, then the respondent could have settled the correct amount without unnecessarily having to come back to court or without any further delay that could have occasioned any accrual of interest.
7. It was stated that the word 'amount' as used in Order (ii) clearly and expressly referred to the sum of Kes. 50,634/- hence the next order (iii) referred again to the amount which had been clearly identified. That the foregoing leaves no doubt that the said interest is only applicable to the amount stated in order number (ii) and no other amount.
8. It was deposed that given that the respondent has since complied with the orders of the court, it was not in the interest of justice that an order be made against the respondent to show cause why execution should not issue regarding an amount that is not reflected anywhere in the orders of 12.03.2020. In the end, this court was therefore urged to dismiss the application herein with costs to the respondent.
9. The applicant further filed a supplementary affidavit sworn on 08.04.2024 averring that the said contested order did not expressly state that the interest is payable only on Kes. 50,634. According to him, the order mentioned that interest was payable for the amount from the date the taxing master taxed the bill. That it is therefore the applicant's understanding that the interest is payable for the entire amount declared to be due and/or payable from the date the taxing master taxed the bill, i.e. on 30.05.2018. The applicant relied on paragraphs 6 and 7 of the Advocates (Remuneration) Order Part 1 which states that interest is not to commence until the amount due is ascertained either by agreement or taxation.
10. The applicant urged that the order 'the interest payable for the amount is to accrue from the date the taxing master taxed the bill' is a general term implying that the interest is to accrue on the entire amount



allowed from the date of taxation. That the claim by the applicant is thus valid and enforceable and as such, this court was urged to allow the same.

11. The court directed that the application be canvassed by way of written submissions but none complied.
12. I have considered the application herein, the response thereof and oral arguments by the parties. The main issue for determination is interpretation of the order issued by this court on 12.03.2024.
13. Order 21 rule 12 (1) and (2) of the Civil Procedure Rules provides as follows:
  1. Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by installments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.
  2. After passing of any such decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.
14. Further, Section 26 of the *Civil Procedure Act* provides as follows;
  - i. Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
  - ii. Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.
15. Having perused the ruling delivered by this court on 12.03.2020, the court at para 53 clearly indicated its calculations to wit:

“I have considered the taxing master ruling dated 30.05.2018 and from the calculation thereof in view of the taxation, it is my finding that the amount taxed off is Kes. 465,000. The total amount claimed is Kes. 992,264. Subtract the sum taxed off of Kes. 465,000/- and you get a total of Kes. 527,264/-, raise the fees by half you get Kes. 790,896 then add 16%VAT and the total comes to Kes. 917,439.36/-. Subtract Kes. 422,900/- fees already paid and you get a total of Kes. 494,539.36. The applicant has since paid another sum of 443,905.95/- vide the amount deposited in court and later paid to the respondent. The outstanding sum in view of the above is Kes. 50,633.41/-.
16. The court thereafter made orders as follows:
  - i. ....
  - ii. The balance amount payable is Kes.50,634 which should be paid within a period of 14 days and in default execution to issue.
  - iii. The interest payable for the amount to accrue from the date taxing master taxed the bill.



17. From the above, the court did its arithmetic and found that the amount owed to the applicant by the respondent was Kes. 50,633.41/-. The court proceeded to direct that the amount owed which in my view is KES. 50,633.41/- be paid within 14 days and in default, execution to issue.
18. In the same breadth, a reading of the said order in my view, was that the amount owed was to attract interest from the date the taxing master taxed the bill. It follows that the court directed and further issued directions in regard to the amount owed by the respondent to the applicant.
19. Of importance to note is the fact that what falls due for determination before me is neither an appeal nor a review but an application for interpretation of the Ruling dated 12.03.2020, specifically Order No. (iii) on the issue of the accrual interest payable on the amount taxed and give a clarification regarding the words 'the interest payable for the amount' as used in the said order.
20. Specifically, in regards to the impugned orders and having in mind that the respondent has since paid an amount of Kes. 50,634/- together with interest of Kes. 17,216/- totaling to Kes. 67,850/-, an amount which the applicant also confirms receipt of, it is my finding that nothing is further owed to the applicant.
21. As a consequence of the above holding, I do not find merit in the application hence it is hereby dismissed with no order as to costs.

Dated, signed and delivered virtually this 16<sup>th</sup> day of May 2024

**J. N. ONYIEGO**

**JUDGE**

