



Joe Ngigi & Co Advocates LLP v Kenyan Alliance Insurance Company Ltd (Miscellaneous Civil Application E067 of 2023) [2024] KEHC 5577 (KLR) (8 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION E067 OF 2023**

GL NZIOKA, J

MAY 8, 2024

BETWEEN

JOE NGIGI & CO ADVOCATES LLP APPLICANT

AND

KENYAN ALLIANCE INSURANCE COMPANY LTD RESPONDENT

RULING

1. By a notice of motion application dated 22nd August 2023, brought under the provisions of; section 51 (2) of the *Advocates Act* (Cap 16) Laws of Kenya, the applicant is seeking for the following orders: -
 - a. That judgment be entered in favour of the applicant against the respondent for the sum of Kenya Shillings Sixty seven Thousand Four Hundred and Sixty six (Kshs. 67,466) being the certified costs due to the applicant as against the respondent.
 - b. That the respondent does pay the applicant the costs of this application together with interest on the taxed sum.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Joseph N. Ngigi, an Advocate of the High Court of Kenya and the proprietor of the applicant's firm.
3. He deposes that, the respondent instructed the applicant firm to act for the Alister Manyani and Stephen Onderi Ondieki the defendants in Naivasha Chief Magistrate Civil Case No. 9 of 2020 Peter Kagwara Kiai vs Alister Manyani and Stephen Onderi Ondeiki and the matter was fully heard and determined.
4. That, the respondent failed to pay the legal fees necessitating the filing of a bill of costs, which was taxed in the sum of Kshs. 67,466 and thereafter a certificate of taxation dated 7th August 2023 issued.
5. Further, the respondent has refused, failed and/or neglected to settle the taxed costs, yet, the certificate of taxation has not been appealed against, set aside, and/or altered.



6. As such in the given circumstances, it is only fair and just that judgment be entered against the respondent as prayed for together with interest.
7. Upon considering the application, the court ordered that, the same be listed for hearing on 9th October, 2023. On the material date, the court directed that the matter be consolidated with High Court Civil Miscellaneous E063 of 2023 and gave a mention date for the 16th October, 2023 for further orders.
8. On the said date, Ms. Mutuku holding brief for Mr. Kinoti for the applicant, informed the court that counsel was indisposed and had not filed the consolidated application. The court directed that the consolidated application be filed within two (2) weeks and slated the matter for hearing on the 7th December, 2023.
9. On the 7th December 2023, the court was not in session and the matter deferred to 22nd January, 2024. On that date, Ms. Mutuku informed the court that, the respondent had been duly served but was yet to file a response. The court stood over the hearing of the application to the 9th April, 2024 and directed that the respondent be served afresh.
10. However, when the matter came up for hearing on 9th April 2024, Mr. Kinoti holding brief for Ms. Mutuku informed the court that they had served the respondent late on the previous day. The court deferred the hearing of the application to 7th May 2024 and directed the applicant to serve the respondent early enough.
11. However, when the matter came up for hearing on 9th May 2024, the respondent had not filed a response and was not in court, despite having been served as evidenced by an affidavit of service dated; 9th April 2024, filed by Dickson Kariuki, the court process server. The application was deemed unopposed.
12. Be that as it were, I have considered the application in the light of the materials availed in support thereof. I note that the law applicable is provided for under section 51(2) of the *Advocates Act*, states that: -

“The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of 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 that regard I note that the applicant has produced evidence of the certificate of taxation issued on 7th August, 2023. The certificate of taxation has not been set aside nor varied and neither is there a there a dispute on retainer in the respective matter, therefore there is no justification to decline to issue the orders sought.
14. However, as regards interest, it suffices to note that the provisions of section 51 (2) of the *Advocates Act* do not provide for interest. However, Rule 7 of the *Advocates Remuneration Order* provides that:-

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.
15. As stated herein, the certificate of taxation was issued on the 7th August, 2023. Therefore, the applicant can only get interest one (1) from the date of service of the same. As that date is not indicated, the date of filing the application being the 22nd August 2023 is considered. One month thereafter is 22nd



September, 2023. Therefore, the interest on the taxed sum will accrue from 22nd September 2023, till payment in full. Costs of the application are awarded to the applicant.

16. In conclusion, I enter judgment for the appellant in the sum of Kshs. 67,466 plus interest at the rate provided for under the law with effect from 22nd September 2023 until payment in full. Costs of the application are awarded to the applicant.

DATED, DELIVERED AND SIGNED THIS 8TH DAY OF MAY, 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:

N/A for the applicant

N/A for the respondent

Ms. Ogutu: Court Assistant

