



Odongo Okal & Co. Advocates v Mak'Ojuando (Miscellaneous Civil Cause E110 of 2023) [2024] KEHC 5205 (KLR) (17 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5205 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL CAUSE E110 OF 2023**

RE ABURILI, J

MAY 17, 2024

BETWEEN

ODONGO OKAL & CO. ADVOCATES APPLICANT

AND

PAUL ODALO MAK'OJUANDO RESPONDENT

JUDGMENT

1. Vide Notice of Motion dated 12th February 2024, the Advocate sought for orders that the Certificate of Costs dated 6th November 2023 in respect of the taxation order made on the 17th August 2023 for the sum of Kenya Shillings Nine Hundred and Three Thousand, Seven Hundred and Sixty-Three only (Kshs 903,763) be adopted as Judgment and Decree of this court together with interests at (14%) per cent per annum from the 4th August 2023 being the date of presentation of the application to taxation of the advocate –client bill of costs till payment in full.
2. The application was supported by the affidavit sworn by Gideon Odongo, an Advocate practicing in the said Advocates' firm on 12th February 2024 on behalf of the Advocates.
3. It was deposed that the Client instructed them to act on his behalf in Kisumu HCCA No. E103 of 2021 – *Family Bank Ltd versus Paul Odalo Mak'ojuando* which they ably did until they sought to cease acting for the respondent. It is the advocates' case that the certificate of costs issued has since not been altered or set aside by the court.
4. They asserted that the respondent having failed to settle the advocate's legal fees due as presented in the final fee note, they presented their Advocate-Client Bill of Costs on 4th August, 2023 and the said Bill was taxed on the 6th November, 2023 and allowed in the sum of Kshs. 903,763 and a Certificate of Costs issued. It was deposed that the advocate was entitled to interest on costs and disbursements computed in the Bill of Costs at the rate of 14% per annum from 6th October 2021 as contemplated in Rule 7 of the Amended *Advocates Remuneration Order*.



5. The deponent was categorical that the said Certificate of Costs had not been altered or set aside by Court. He thus urged this court to enter judgment in the advocates' favour.
6. At the oral hearing, the advocate submitted that the respondent had paid some money which they would give credit on the amount already paid.
7. The Respondent/ client did not file any replying affidavit or grounds of opposition but at the oral hearing, his counsel submitted through Ms. Omondi advocate arguing that the application did not indicate the amount to be converted into a judgment and further that the court should consider the respondent's conduct as he has made efforts to clear the outstanding amount that was quite substantial on interest. Ms. Omondi further argued that as a result, the interest be from the date of judgment.

Analysis & Determination

8. I have considered the application, the supporting affidavit and the oral submissions for and against the prayers sought. The application was brought under the provisions of Section 51 of the *Advocates Act* Cap 16 (Laws of Kenya) which at sub section (2) empowers the court to enter judgment on taxed costs in favour of an advocate, where a certificate of costs has not been set aside or varied, and in addition, where no reference has been filed. Of course, judgment can only be entered into where the Judge is satisfied that there was no irregularity in the process of taxation of the bill of costs presented.
9. The advocate also relied on Rule 7 of the *Advocates Remuneration Order* which provides for interest on the said costs at fourteen (14%) per cent per annum from one month after he allegedly served the final fee note upon the client until payment in full.
10. 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.”
11. 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.”
12. Having considered the respective parties' oral submissions, it was clear that the Certificate of Costs that was issued by the Taxing master was not under challenge and neither had it been set aside and/or altered and that the respondent client was already settling the taxed costs even without a decree hence no reference under Paragraph 11 of the *Advocates Remuneration Order* challenging the decision of the said Taxing Master was filed or is pending determination.
13. On interest, courts have held that the court has the discretion to determine when interest ought to run. In the case of *Otieno Ragot & Company Advocates vs Kenya Ports Authority* [2021]eKLR, it was held that although Rule 7 of the *Advocates Remuneration order* 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.



14. In the case of *D. Njogu & Company Advocates vs 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.
15. However, 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 was therefore a reference point, from when interest would be calculated. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
16. Further, 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 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.
17. In this case, it was not clear to this court when the bill was submitted to the Client for settlement before being taxed. Although the Advocate claimed to have served the same upon the Client one month prior to the 6th October 2021, there was no evidence of a letter of dispatch or evidence of service of the said bill to prove the claim. Be that as it may, this court noted from the proceedings before the Taxing Master that the Client was never represented despite directions on many instances that he be served.
18. In the absence of any evidence of when the itemized Bill of Costs was first delivered to the Client, this court finds that the Client was certainly only aware of the Advocate- Client Bill of Costs as at 12th March 2024 when the parties first appeared before this court. The Bill of Costs has remained unsettled although the parties are in agreement that the respondent has paid part of it.
19. Bearing in mind the holding in *D. Njogu & Company Advocates vs Kenya National Capital Corporation* (Supra) which this court fully associates itself with, my conclusion is that the one (1) month envisaged in Rule 7 of the *Advocates Remuneration Order* lapsed on 12th April 2024. Interest would thus accrue on the certified costs from 12th April 2024.
20. The certified costs became payable as the certificate of costs was not altered or set aside. The claim for payment of fourteen (14%) per cent per annum was raised in the present application and as the certified costs had not been paid, the interest is payable.
21. The upshot of all the above is that the Advocate’s Notice of Motion application dated 12th February 2024 is partially successful and the same be and is hereby allowed in the following terms:
 - a. Judgment be and is hereby entered in favour of the Advocate/applicant in the sum of Kenya Shillings Nine Hundred and Three Thousand, Seven Hundred and Sixty-Three only (Kshs 903,763) together with interest thereon at fourteen (14%) per cent per annum calculable after thirty (30) days from the date when application was served upon the Client being the 12th April 2024 until payment in full.
 - b. The applicant/ advocate shall give credit to the respondent/client for the sums already paid to him
 - c. Decree to issue



- d. To avoid escalation of costs and further litigation on costs, each party to bear their own costs of the application
- e. Mention before the Deputy Registrar on 17/7/2024 to confirm settlement.

DATED., SIGNED AND DELIVERED AT KISUMU THIS 17TH DAY OF MAY, 2024

R.E. ABURILI

JUDGE

