



Kemboy Law Advocates v Narok County Government (Miscellaneous Civil Application E073 of 2023) [2024] KEHC 7191 (KLR) (14 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E073 OF 2023**

RE ABURILI, J

JUNE 14, 2024

BETWEEN

KEMBOY LAW ADVOCATES ADVOCATE

AND

NAROK COUNTY GOVERNMENT CLIENT

*(Arising from Kisumu Constitutional Petition No. 7 of 2018
formerly Kisii High Court Constitutional Petition No. 6 of 2018)*

RULING

1. On June 6, 2023, the Advocate/Applicant Kemboy Law Advocates filed their Advocate/Client Bill of Costs dated February 15, 2023 against the Client/Respondent Narok County Government.
2. The Bill which totalled Kshs.26,793,435 was in respect of professional legal services rendered by the Advocate for the client on the latter's instructions in Constitutional Petition No. 7 of 2018 at Kisumu High Court, formerly Kisii High Court Constitutional Petition No. 6 of 2018, wherein the Client/Respondent was the 21st Respondent.
3. In support of the said Bill of Costs, the advocate also filed a bundle of pleadings and documents.
4. Before the said advocate/client Bill of Costs could be taxed by the Deputy Registrar of this court, the Client/Respondent filed a preliminary Objection dated July 31, 2023 urging the court to strike out the Advocate/Client Bill of Cost on the grounds that the court lacked jurisdiction to hear and determine the matter in view of Section 4, 6 and 10 of the *Arbitration Act*, 1995. Secondly, that the Bill of Costs dated February 15, 2023 was an abuse of court process, bad in law and could not be entertained as the Applicant had infringed the exhaustion doctrine contemplated in Article 159(2) (c) of the *Constitution*.



5. The Preliminary Objection was argued by way of written submissions and vide a Ruling dated October 26, 2023, the Deputy Registrar dismissed it and proceeded to tax the Advocate/Client Bill of Costs.
6. The Bill was taxed interpartes and a ruling rendered on April 8, 2024 at taxing the bill of costs at Kshs.871,425. A certificate of costs was then issued on April 17, 2024.
7. Vide an application brought under Section 51 of the Advocate Act, dated 18th April 2024, the Advocate now seeks orders for adoption of the certificate of costs dated 17th April 2024 as judgment of the court and a decree do issue in terms of the taxed costs.
8. The Respondent never filed any written response opposing the application. In addition, there is no reference filed under paragraph 11 of the Advocate Remuneration Order and neither is there any challenge as to retainer. In other words, the certificate of costs has not been set aside.
9. The application was argued orally on June 5, 2024 with the Applicant's counsel Mr. Kere restating the prayers, the grounds and supporting affidavit.
10. On part of the Respondent Client, Mr. Kaloki Mumo submitted that he opposed prayer No. 2 on interest because under paragraph 7 of the Advocates Remuneration Order, interest at 14% p.a is provided for but that in this case, there is no evidence of service of the Bill of Costs upon the client for settlement.
11. In a rejoinder, Mr. Kere submitted that there are two affidavits presented before the Deputy Registrar showing service of the fee note upon the Client/Respondent. He relied on the case of D. Njogu & Company vs Kenya National Capital Corporation.
12. He submitted that on 6th October 2022 they served the fee note upon the client before taxation and that the client acknowledged this service on 31st July 2023.

Determination

13. I have considered the application and the submissions for and against the prayer for the interest. The issue for determination is whether the advocate is entitled to the prayers sought.
14. First, is whether this court should enter judgement in terms of the certificate of costs dated 17th April 2024. There is no dispute on this prayer. I must however, determine it in line with the legal provisions.
15. 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.”
16. The Section empowers this court to enter judgment in terms of the certificate of costs, where there is no challenge as to retainer and secondly, where the certificate of costs has not been set aside. Thirdly, where no reference under paragraph 11 of the *Advocates Remuneration Order* is pending.
17. In the instant case, no Reference has been filed challenging either the taxation which took place on April 17, 2024 nor has the Respondent raised any dispute as to retainer. In addition, the certificate of costs has not been set aside.



18. Accordingly, my simple task is, and I hereby enter judgment for the advocate in favour of the Applicant/Advocate against the Client/Respondent in the sum of Kshs.871,425 as per the certificate of costs dated April 17, 2024.
19. On whether interest at 14% p.a should be awarded to the Applicant/Advocate, the Respondent had issues with this prayer. Its counsel contended that there was no evidence of service of the fee note prior to taxation.
20. In response, the advocate’s counsel submitted that the bill was served upon the client on October 6, 2023 and that the client acknowledged as per the two affidavits of service filed.
21. To resolve this issue of interest, at what rate and from when, first, is that the Applicant has simply prayed for interest on the taxed costs at 14% p.a but has not stated from what date the interest should start running until payment in full.
22. Rule 7 of the *Advocates Remunerations Order* provides that:-

“An advocate may charge interest 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, if such claim for interest is raised before the amount of the bill has been paid or tendered in full.”
23. I have perused the Bill of Costs dated 15th February 2023. All the 61 items in the bill end at 3rd November 2022 as the last date of action. There is no item for service of the bill of costs upon the client. There is also no indication in that bill that before that bill of costs was filed in court, a fee note was sent to the client and interest of 14% p.a claimed therein.
24. What Rule 7 of the *Advocate Remuneration Order* contemplates is that for an advocate to claim for interest at 14% per annum from the date when the bill was presented to the client for settlement, there must have been an indication in that bill or letter of demand that interest will be charged at that rate. It is an advance warning to the client to settle the bill or pay with interest which would accrue from one month after presentation or service of such itemised. However, failure to serve the Bill of costs before action does not necessarily deny the advocate interest.
25. As I stated in *Owiti Otiemo & Ragot Advocate vs LVSWWDA* Misc. No. E102 of 2022 [2024] KEHC Kisumu in a Ruling rendered on 5th April 2024, citing *D. Njogu & Co. Advocate vs KNCC* [2006] eKLR, 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.
26. The court in the above case explained what it meant by ‘the correct fee note’ to mean a bill that was drawn in accordance with the terms upon which an 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.
27. In this case, the taxed amount has not been settled and is not challenged in any way. The certificate of taxation is dated April 17, 2024. There is no evidence of the bill having been tendered with a demand for interest at 14% p.a.
28. However, the bill was taxed interpartes and it was served upon the client prior to the taxation and the client actively participated in the taxation after it raised the Preliminary Objection.



29. I reiterate that 14% interest was never claimed even in the bill as presented. In the premises, I find and hold that the advocate would be entitled to interest at 14% p.a from the date of the ruling on taxation which is April 8, 2024 until payment in full.
30. In the end, I enter judgment for the advocate/ applicant against the client/ respondent in the sum of Kshs.871,425 plus interest at 14% p.a from April 8, 2024 until payment in full.
31. Decree to issue forthwith together with certificate of order against the Government.
32. In order not to escalate costs in this matter, I order that each party shall bear their own costs of the application.
33. Mention before the Deputy Registrar on September 26, 2024 to confirm settlement.
34. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 14TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

