



Ataka , Kimori & Okoth Advocates v Foton East Africa Limited (Miscellaneous Application 134 of 2017) [2024] KEHC 8478 (KLR) (10 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION 134 OF 2017**

PN GICHOHI, J

JULY 10, 2024

IN THE MATTER OF THE ADVOCATE- CLIENT BILL OF COSTS

BETWEEN

ATAKA , KIMORI & OKOTH ADVOCATES APPLICANT

AND

FOTON EAST AFRICA LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated 28th November 2023 and brought under Section 51(2) of the *Advocates Act* and Order 51 of the *Civil Procedure Rules*, the Applicant seeks orders that:-
 1. Judgment be entered in favour of the Applicant for the sum of Kshs. 549,500/= being the sum of costs taxed by the taxing officer and contained in the certificate of Taxation issued on 11th August 2023.
 2. The Court orders that interest in the taxed sum attracts interest at court rates from the date of taxation until payment in full.
 3. The costs of the application be awarded to the Applicant.
2. The grounds are on the face of the application supported by the Affidavit sworn by Valentine Ataka on 28th November 2023. He depones that he notified the Respondent of the Certificate of Taxation by way of an electronic mail and WhatsApp but the Respondent ignored and failed to make good the certificated of Taxation. That the Respondent never made any payment towards the settlement of the taxed costs.
3. Further, he depones that the Certificate of Taxation has never been set aside or varied through an order of this Court and therefore, it is in the interest of justice that he be granted the orders sought.



Determination

4. The record herein shows that the Applicant's costs arose from Nakuru H. C Civil Case No. 28 of 2014 where the Applicant represented the Respondent herein. It is said that the Respondent later withdrew the instructions from the Applicant around 19th April, 2017. However, the Applicant and the Respondent failed to agree on final fees arising from the Applicant's conduct in the said stated suit.
5. It is the reason that the Applicant filed his Bill of Costs dated 25th April, 2017 seeking a total of Kshs. 557,698.40. That Bill was served on the Respondent and the firm of Okundi & Co. Advocates promptly filed a Notice of Appointment.
6. However, the Respondent never filed a response and did not attend court for taxation. The Taxing Officer ultimately taxed the Bill at Kshs. 549,500/= and issued a Certificate of Taxation on 11th August 2023.
7. Section 51 (2) of the Advocates Act provides that :-

“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.”
8. The Affidavit of Service on record shows that the Respondent was duly and personally served with this application but did not respond. The costs have not been reviewed, varied, appealed against or set aside and further, this application is unopposed.
9. The Applicant is entitled to interest at the rate of 14% under Paragraph 7 of the Advocates (Remuneration) Order which 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.”
10. The Applicant has sought interest from the date of taxation. In the circumstances the application dated 28th November 2023 is allowed in the following terms:-
 1. Judgment be and is hereby entered in favour of the Applicant as against the Respondent in the sum of Kshs. 549,500/= being the sum of costs taxed by the taxing officer and contained in the Certificate of Taxation issued on 11th August 2023.
 2. The interest thereon is awarded at fourteen (14%) per cent per annum calculable after Thirty (30) days from the date when the bill was taxed being the 6th December, 2022 until payment in full.
 3. The Costs of the application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 10TH DAY OF JULY, 2024.

PATRICIA GICHOHI

JUDGE



In the presence of:

Ms Kinaga for Mr. Ataka for the Applicant

N/A for the Respondent

Ruto, Court Assistant

