



**CK Nyabuto Advocates v Boro (Miscellaneous Application
E038 of 2022) [2024] KEHC 8548 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E038 OF 2022**

A MSHILA, J

JULY 5, 2024

BETWEEN

CK NYABUTO ADVOCATES APPLICANT

AND

ANTONY NJEHU BORO RESPONDENT

JUDGMENT

BACKGROUND

1. Before court is the Notice of Motion dated 2nd February, 2024 and brought under Section 51(2) of the *Advocates Act* (CAP 16). Rule 13A of the *Advocates Remuneration Order, 2014*, Section 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*; The Applicant sought for the following orders:-
 - a. That the Honorable Court be pleased to enter Judgment in favor of the Applicant herein, in the sum of Kshs 233,947/10 as appears on the Certificate of Taxation dated 26/09/2023 with interest from the date of filing this application until payment in full.
 - b. That the Applicant be allowed to execute the Judgment herein against the Respondent herein.
 - c. That the costs of the application be borne by the Respondent.
2. The application is premised on the grounds on the face of the application and the Supporting Affidavit of Cynthia Nyabuto dated 2/02/2024 made in support of the application; therein she states that the Respondent instructed the firm of Cynthia Nyabuto Advocates to act for its client in Kiambu HCC No 40 of 2018 Antony Njehu Boro v Royal Media Services Limited & 5 others.
3. The Respondent failed to pay the legal fees thereby necessitating the filing of the Bill of Costs dated 7/03/2021 which was taxed and a Certificate of Taxation was issued on 26/09/2023 which taxed costs the Respondent has failed and/or neglected to settle.



4. The instant application was uncontested as the Respondent failed and or neglected to file any response despite service having been effected.
5. The Applicant prayed that judgment be entered as prayed for the sum of Khs. 233,947/10 together with interest thereon. The Applicant also prayed for costs of the application.

Issues For Determination

6. Having considered the application and the supporting affidavit the issues framed for determination are;
 - i. Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs 233,947/10 and;
 - ii. Whether interest is applicable thereon.

Analysis

7. Section 51(2) of the *Advocates Act* provides:-

“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 recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs.”
8. The wordings of the above section empower the court to enter judgment on the taxed amount if the same is uncontested.
9. In determining whether the court should adopt the amount on the Certificate of Taxation as the judgment of the court it should be satisfied that the certificate of taxation has not been set aside.
10. Reference is made to the case of *Lubulellab & Associates Advocates v N. K. Brothers Limited* (2014) eKLR where the court observed that:-

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of Costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”
11. From perusal of the court record this court is satisfied that the Ruling is uncontested as the Respondent has not moved any court by way of filing a Reference against the Ruling nor has the Ruling been set aside, altered, varied and / or reviewed, nor has any appeal been filed.
12. Therefore, no other action is required from this court save to enter judgment as prayed against the Respondent.

Whether interest is applicable thereon and payable
13. The Applicant contends that it served a Demand Letter dated 4/10/2023 for settlement of the taxed costs; the same was not settled necessitating the filing of this application which was duly served together with the Certificate of Taxation. The Applicant seeks the court to grant interest thereon at 14% per annum until payment in full.



14. 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.”

15. The above rule stipulates that such claim for interest must be raised for it to start to accrue after the expiration of one month from the delivery of the bill to the client.

16. In the case of *Kerongo & Company Advocates v Africa Assurance Merchant Co. Limited* [2019] eKLR the court held;

‘An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the *Advocates Remuneration Order*. As the advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum.’

17. The record reflects that on the 17/08/2022 the Respondent was served via his email address with a Notice of Taxation dated 17/08/2022; the Applicant also sent to the Respondent a Demand Letter dated 4/10/2023 which was accompanied with the Certificate of Taxation dated 26/09/2023; After careful perusal of the Demand Letter nowhere is there a claim for interest raised therein.

18. Therefore, in line with Rule 7, the Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent; the prayer for interest to start accruing on the costs is therefore disallowed.

Findings & Determination

19. For the forgoing reasons this court makes the following findings and determinations:-

- i. This Court finds the application to be partially meritorious and it is hereby partially allowed;
- ii. The Certificate of Taxation dated 26/09/2023 in the sum of Kshs 233,947/10 is hereby adopted as a Judgment of this court. Judgment be and is hereby entered in favour of the Advocates in the sum of Kshs 233,947/10;
- iii. The prayer for interest is found to be unproven and it is hereby disallowed.
- iv. Each party to bear own their costs of this application.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 5TH DAY OF JULY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

N/A by parties

