



**Urbanus Kioko t/a Urbanus K & Associates Advocates v Trident Insurance Company Limited
(Miscellaneous Civil Application E263 of 2021) [2024] KEHC 8149 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E263 OF 2021**

A MSHILA, J

JULY 5, 2024

BETWEEN

**URBANUS KIOKO T/A URBANUS K & ASSOCIATES
ADVOCATES APPLICANT**

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The Application is a Notice of Motion dated 9th March, 2024 brought under Section 51(2) of the [Advocates Act](#) and Paragraph 7 of the Advocates Remuneration Order 51 Rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law; the Applicant seeks for orders that;
 - a. Judgment be entered for the taxed party & party costs in the sum of Kshs.80,000/- being certified costs as per Certificate of Taxation herein dated 15th January, 2024 with interest thereon at the rate of 14% per annum from 28th February, 2022 until payment in full.
 - b. Costs of this Application be provided for.
2. The Application was supported by the sworn Affidavit of Urbanus Kioko Who stated that the Applicant's Bill of Costs dated 12th November, 2021 was taxed and allowed against the Respondents in the sum of Kshs.80,000/- and a Certificate of Taxation dated 15th January, 2024 was duly issued.
3. The decision of the Taxing Officer delivered has not been reviewed and/or set aside. The Respondent has not objected to the taxation, neither did it file a reference against the Certificate of Taxation and have not settled the amount thereof.
4. The Application is a Notice of Motion dated 9th March, 2024 brought under Section 51(2) of the [Advocates Act](#) and Paragraph 7 of the [Advocates Remuneration Order](#) 51 Rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law; the Applicant seeks for orders that;



- c. Judgment be entered for the taxed party & party costs in the sum of Kshs.80,000/- being certified costs as per Certificate of Taxation herein dated 15th January, 2024 with interest thereon at the rate of 14% per annum from 28th February, 2022 until payment in full.
 - d. Costs of this Application be provided for.
5. The Application was supported by the sworn Affidavit of Urbanus Kioko who stated that the Applicant's Bill of Costs dated 13th March 2018 was on 7th February 2019 taxed and allowed against the Respondents in the sum of Kshs.46, 146,643.60 and a Certificate of Taxation duly issued.
 6. Even though the Respondents had objected to the taxation on several items but it is noted that it did not file a Reference against the Certificate of Taxation and neither did they file an application to set aside the Consent Order entered into by the parties; which Consent was adopted on 28/02/2022 as an order of the court. The Consent Order is not disputed. The Respondents have not settled the amount thereof.
 7. The Taxing Officer erred in law and fact in awarding the Advocate/Applicant Kshs.83, 420 despite the fact that the same had not been supported by any evidence. It is in the interest of justice that this application be allowed as the advocate's Bill of Costs was taxed at a colossal amount of Kshs.46, 146,643.60.

Issues for Determination

8. After considering the Applications, Responses and the written submissions by the parties herein; the court finds that the following issues are for determination:
 - a. Whether the decision of the Taxing Officer delivered on 1st February 2019 be set aside?
 - b. Whether judgment should be entered for the Advocate/Applicant against the Clients/ Respondents as per Certificate of Taxation herein dated 7th February 2019?
 - c. Whether interest is applicable thereon from

Analysis

Whether the decision of the Taxing Officer delivered on 1st February 2019 be set aside; Whether judgment should be entered for the Advocate/Applicant against the Clients/Respondents as per Certificate of Taxation herein dated 7th February 2019;

9. 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.”
10. The wordings of the above section empower the court to enter judgment on the taxed amount if the same is uncontested.
11. 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.



12. Reference is made to the case of *Lubullellah & Associates Advocates Vs 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.”

13. 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.
14. 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

15. The Applicant has not alluded to serving the Respondent with any Demand Letter for settlement of the taxed costs; nevertheless, the fees have never been settled necessitating the taxation of the Bill of Costs and thereafter 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.

16. 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.”

17. 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.

18. In the case of *Kerongo & Company Advocates vs 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.’

19. The record reflects that on the 20/12/2021 the Respondent was served via its email address with a Notice of Taxation dated 17/12/2021. After careful perusal of the court record nowhere is there a claim for interest raised in the Notice of Taxation nor is there any averments or evidence to support the sending of any Demand Letter to the Respondent by the Applicant.



20. 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 found to be devoid of merit and is therefore disallowed.

Findings and Determination

21. 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 15th January, 2024 in the sum of Kshs. 80,000/- 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.80,000/-;
 - iii. The prayer for interest is found to be devoid of merit and it is hereby disallowed.
 - iv. Each party to bear own their costs of this application.

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

HON. A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

