



**Njuguna & Partners Advocates v Okeyo (Miscellaneous Civil Application
148 of 2018) [2024] KEHC 9848 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9848 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION 148 OF 2018
RE ABURILI, J
AUGUST 8, 2024**

IN THE MATTER OF TAXATION OF ADVOCATE/CLIENT BILL OF COSTS

BETWEEN

NJUGUNA & PARTNERS ADVOCATES ADVOCATE

AND

ERICK OKEYO CLIENT

RULING

1. This ruling determines the application dated 18th January, 2024 seeking for judgment to be entered in favour of the applicant advocate against the client respondent in the sum of Kshs 324,500 being the taxed costs herein and that interest at the rate of 14% per annum be granted on the taxed costs from 23rd September 2018 until payment in full.
2. The applicant also prays for costs of the application to be assessed and included in the decree.
3. The grounds in support of the application as replicated in the depositions by affidavit sworn by Abel Githiri Advocate on 18th January, 2024 are that the advocate served the client with the advocate client bill of costs dated 13th July 2018 on 23rd August 2018 and on 6th November 2023, the Deputy Registrar delivered a ruling taxing the bill at Kshs 324,500 and issued a certificate of costs dated the same day. it is deposed that since the certificate of costs has not been set aside, it constitutes a bona fide debt and that therefore judgment should be entered in favour of the advocate.
4. The certificate of costs and the bill of costs as served are annexed.
5. During the pendency of the application, the respondent paid to the advocate entire taxed costs and this was conceded by the advocate who nonetheless indicated that what they were now pursuing was the interest.



6. The parties sought time out to negotiate on the question of interest hence the delay in resolving this simple matter.
7. That said, as the taxed costs have already been paid, the act of entering judgment in terms thereof pursuant to section 51(2) of the Advocates Act is a foregone issue. It would be superfluous to enter judgment and draw decree in a matter that is concluded and or overtaken by events by way of a settlement.
8. The client/respondent filed a replying affidavit after it became clear that the advocate was not agreeing to foregoing the interest claimed to run from 23rd September, 2018 until payment in full. In the said replying affidavit, he deposes in contention that he was not responsible for the delay in the taxation of the bill of costs which costs he settled in full on 19th January 2024 and 12th March 2024 respectively, in the two instalments, and that therefore he should not be punished with interest.
9. I have considered the application and prayer for interest and the response thereto in opposition.
10. The issue now is whether interest on the taxed costs is payable and if so, at what rate and from what date.
11. The relevant provision is Rule 7 of the Advocates Remuneration Order which stipulates that:

“ An Advocate may charge interest at 14% 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 such a claim for interest is raised before the amount of the bill has been paid or tendered in full.”[emphasis added]
12. 9. From the above provision, the Advocate is not entitled to interest from the date when he filed the Bill of Costs in Court or even when he served the bill of costs upon the client. I so find because the quantum sought in the Bill of Costs was much more than the sum which the learned Taxing Officer finally awarded, being Kshs 5,700,909.76 drawn against Kshs 324, 500 awarded
13. In my considered view, the Client became aware of the “Bill” on the date when the Ruling on Taxation was delivered.
14. Rule 7 of the Advocates Remuneration Order was no doubt designed to allow a Client a period of 30 days from the date when the Advocate delivered his bill.
15. The Rule also emphasises that such interest at 14% per annum would only be allowable if the proviso to the Rule was complied with which is that provided such a claim for interest is raised before the amount of the bill has been paid or tendered in full.
16. I have carefully perused the bill which was served on 23rd August 2018. I do not find any indication that the advocate raised the issue of interest chargeable.
17. In addition, there is nothing on record to show that the client was responsible for the delay in taxing the bill of costs which was filed way back in 2018. The record shows that after the initial taxation by Hon Linah Akoth on 20th August 2020, on 26/1/2021, J. Kamau J set aside that taxation and directed that the bill be re-taxed before another Deputy Registrar other than the one who had taxed it earlier.
18. On 9/5/2024, Mr. Githiri informed this court that he had been paid the full amount and that the only remaining issue was the interest and therefrom, parties engaged in negotiations to resolve that issue in vain. he did not say when he was paid the taxed costs in full. The costs were taxed on 66th November, 2023 and the application herein was filed on 19th January, 2024.



19. From paragraph 3 of the replying affidavit sworn by Erick Okeyo on 13th May, 2024, he paid Kshs 100,000 on 19/1/2024 and the balance was settled on 12th March 2024.
20. It follows that indeed, the client did settle the taxed partly before the application herein was filed and soon thereafter before the hearing of the application, he paid the balance.
21. In my humble view, the advocate cannot now claim for interest at 14% which he did not raise in the bill that was served before taxation and even if he were to be entitled to such interest, it would only be one month after raising it and before settlement meaning, having raised it first in the application dated 18th January 2024, which application he has not told the court when it was served, so that the interest could run from one month after such service, I find no merit in the prayer for interest at 14% per annum from 23rd September, 2018.
22. In the end, I hereby decline to grant the prayers sought in the application dated 18th January, 2024 and dismiss it for the reasons given hereinabove.
23. I order that each party bear their own costs of the application.
24. This file is accordingly closed.
25. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 8TH DAY OF AUGUST, 2024

R.E. ABURILI

JUDGE

