



**Joe Ngigi & Company Advocates LLP v Kenyan Alliance Insurance Company Ltd (Miscellaneous Civil Application E043 of 2023) [2024] KEHC 10984 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10984 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CIVIL APPLICATION E043 OF 2023  
GL NZIOKA, J  
SEPTEMBER 16, 2024**

**BETWEEN**

**JOE NGIGI & COMPANY ADVOCATES LLP ..... APPLICANT**

**AND**

**KENYAN ALLIANCE INSURANCE COMPANY LTD ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated 14<sup>th</sup> March 2024, brought under the provisions of; section 51 (2) of the *Advocates Act* (Cap 16) Laws of Kenya, the applicant is seeking for the following orders: -
  - a. That judgment be entered in favour of the applicant against the respondent for the sum of Kenya Shillings One Hundred and Fifty Eight Thousand and Nine Hundred and Twenty (Kshs. 158,922) only being the certified costs due to the applicant as against the respondent.
  - b. That the respondent pay to the applicant the costs of this application together with interest on the taxed sum.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Joseph N. Ngigi, an Advocate of the High Court of Kenya and the proprietor of the applicant's firm.
3. He deposes that, the respondent instructed the applicant's firm to act for it in Naivasha Chief Magistrate Civil Case No. E052 of 2020 SWM (minor suing through her next friend TNM) vs Kenyan Alliance Insurance Company Limited.
4. That the matter was fully heard and determined. However, the respondent failed to pay the legal fees thus necessitating the filing of a bill of costs. That the bill was subsequently taxed in the sum of Kshs. 158,922 and a certificate of taxation dated 7<sup>th</sup> August 2023 issued.



5. That despite the fact that the certificate of taxation has not been appealed against, set aside, and/or altered and respondent's knowledge of the taxed costs, the respondent has refused, failed and/or neglected to settle the taxed amount.
6. The applicant thus argues that, in the given circumstances, it is only fair and just that judgment be entered against the respondent as prayed for together with interest.
7. Upon considering the application, the court ordered that, the same be served for hearing on 7<sup>th</sup> May, 2024. On the material date, the applicant informed the court that it had served the respondent however, there was no evidence of service. The matter was then set for hearing on 17<sup>th</sup> June, 2024 and the applicant directed to serve the respondent afresh.
8. However, the 17<sup>th</sup> June 2024 was declared a public holiday and the matter was stood over to the 18<sup>th</sup> July, 2024. The respondent was served with a hearing notice as evidenced by the affidavit sworn by Timothy Maxwel Oyombera on 2<sup>nd</sup> July 2024. However, the respondent did not appear on the scheduled date.
9. Be that as it were, I have considered the application in the light of the materials availed and the application is anchored on the provisions of section 51(2) of the *Advocates Act*, which states that: -

The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of 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
10. In support of its application, the applicant has produced evidence of the certificate of taxation issued on 7<sup>th</sup> August, 2023. It suffices to note that it has not been set aside nor varied and neither is there a dispute on retainer in this matter. Therefore, there no good reason to decline to issue the orders sought.
11. As regards interest, it suffices to note that the provisions of section 51 (2) of the *Advocates Act* do not provide for interest. However, Rule 7 of the Advocates Remuneration Order 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.
12. In the instant matter, a perusal of the court record reveals that, the bill of costs and a notice of taxation was served upon the respondent on 24<sup>th</sup> May, 2023 as evidenced by an affidavit of service sworn by Dickson Kariuki on 25<sup>th</sup> May, 2023.
13. Therefore, interest is payable one (1) from the date of service of the same, being the 25<sup>th</sup> day of June, 2023. till payment in full.
14. In conclusion, I enter judgment for the appellant in the sum of Kshs. 158,922 plus interest at 14% with effect from 25<sup>th</sup> June 2023 until payment in full. Costs of the application are awarded to the applicant.
15. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**GRACE L NZIOKA**

**JUDGE**



In the presence of:

Ms Mwangi for the applicant

No appearance for the Respondent

Mr Komen: Court Assistant

