



**Kinyanjui Njuguna & Co Advocates v Invesco Assurance
Company Limited (Miscellaneous Application 47 of 2019)
[2024] KEHC 10590 (KLR) (Commercial and Tax) (10 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 47 OF 2019**

**A MABEYA, J
SEPTEMBER 10, 2024**

BETWEEN

KINYANJUI NJUGUNA & CO ADVOCATES ADVOCATE

AND

INVESCO ASSURANCE COMPANY LIMITED CLIENT

RULING

1. Before court is an application dated 26/7/2023. It was brought under order 51 of the Civil Procedure Rules section 51(2) *Advocates Act* Cap 16, order 7 of the *advocates (remuneration) order* under section 48 of Cap 16. It sought judgment/decree for Kshs. 268,940/- and interest at the rate of 14% per annum from 4/2/2015.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Kinyanjui Theuri of even date. It was averred that the bill of costs had been taxed at Kshs 268,940/= and the respondent had continually failed to pay the legal fees. The applicant stated that the respondent was facing liquidity issues and the recovery of the funds was in jeopardy. That if the orders sought are not granted the applicant/advocate would be highly prejudiced.
3. The application was opposed by the respondent in replying affidavit sworn by sylvia makassy on 6/12/2023. It was contended that the although the bill of costs had been taxed, no interest was awarded. That the decision of the taxing master was final and should not be disturbed pursuant to section 51(2) of the *Advocates Act*. That the respondent had not refused to pay the applicant rather there were other costs the respondent was paying.



4. The parties did not file their respective submissions. I have considered the contestations of all the parties in the pleadings on record. The main issue for determination is whether judgment should be entered in terms of the certificate of costs.
5. Section 51(2) of the *Advocates Act* Cap 16 (Laws of Kenya) empowers the court to enter judgment on taxed costs in favour of an advocate. It 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.”
6. In view of the foregoing, once a taxing officer issues a certificate of costs under subsection (2), it becomes final unless the court sets it aside or alters it. Consequently, judgment can be entered based on the amount specified in the certificate of taxation.
7. In the present case, the court has not identified any valid reasons to set aside the Certificate of taxation issued by the taxing officer. Given that the Certificate has neither been altered nor set aside, the court is obligated to grant the application for entry of judgment.
8. In *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR, the court reiterated this position as follows: -

“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.
9. In this case, it is not disputed that the certificate of costs was issued on 17/7/2023 for a sum of Kshs 268,940/-. The said amount has not been set aside by the court by way of reference. The only issue in dispute is whether interest should be awarded.
10. Rule 7 of the *Advocates Remuneration Order* allows an advocate to charge interest on his costs and disbursements as follows: -

“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.”
11. The rate of interest which an advocate may charge is set at 14% per annum from the expiration of one month from the delivery of the bill to the client. I find that the advocate herein is entitled to interest. There was no evidence to show when the fee-note was delivered to the respondent. However, it is clear that the bill was delivered on 8/2/2019. Interest will run 30day from that date.
12. Accordingly, I find merit in the application and the same is allowed in the following terms: -
 - a. Judgment be and is hereby entered in favour of the Advocate in the sum of Kshs. 268,940/- together with interest thereon at fourteen (14%) per cent per annum from 30/3/2019.
 - b. Costs of this application be awarded to the Advocate.



It is so ordered.

DATED AND DELIVERED VIRTUALLY ON THIS 10TH DAY OF SEPTEMBER, 2024.

A. MABEYA, FCI Arb

JUDGE

