



Magatta & Associates v Trident Insurance Co. Ltd (Miscellaneous Civil Application E017 of 2024) [2024] KEHC 10894 (KLR) (16 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION E017 OF 2024
GL NZIOKA, J
SEPTEMBER 16, 2024**

BETWEEN

MAGATTA & ASSOCIATES APPLICANT

AND

TRIDENT INSURANCE CO. LTD RESPONDENT

RULING

1. By a notice of motion application dated 26th June 2024 brought under the provisions of section 51 (2) of the *Advocates Act* (Cap 16) Laws of Kenya, section 27(2) of the *Civil Procedure Act* (Cap 21) Laws of Kenya and Order 51 Rule 1 of the Civil Procedure Rules, 2010 the applicant is seeking for orders: -
 - a. That the court be pleased to enter judgment against the respondent for the sum of Kshs. 235,705.00 only in the terms of the Certificate of Costs dated 6th June 2024 together with the accrued interest thereon until payment in full.
 - b. The cost of this application be borne by the respondent.
2. The application is supported by the grounds thereto and the affidavit of even date sworn by Owen Magatta, an Advocate of the High Court of Kenya practising as such in the applicant's firm.
3. He avers that nine (9) years ago in the month of July 2016 the respondent instructed the applicant's firm to file a "repudiatory" suit and the applicant filed the same vide Chief Magistrate Civil Suit No. 774 of 2016 at Naivasha.
4. However, the respondent refused to pay the legal fees for the service rendered necessitating the applicant filing Advocates-Client bill of costs dated 23rd February, 2024.
5. That, the Deputy Registrar delivered the ruling on the bill on 31st May 2024 and taxed the bill of costs at Kshs. 235,705. A certificate of costs was subsequently issued on 6th June 2024. The applicant thus prays that judgment be entered in its favour as prayed.



6. The application was served but the respondent did not file any response.
7. It is noteworthy that, the application is anchored on the provision of section 51(2) of the Advocates Act, which states as follows: -

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.
8. In the instant matter the applicant has in support of the application produced a letter of instructions from the respondent dated 4th July 2016 to file a declaratory suit under section 10(4) of the (Cap 405) laws of Kenya arising from Naivasha CMCC No(s). 509, 501, 511, 512, 513, 514, 515, 516, 517, 518, 519 of 2016.
9. In addition, bill of costs dated 23rd February 2024 which was taxed and the resultant certificate of costs dated 6th June 2024 have also been availed.
10. It suffices to note that there is no dispute as to the retainer and neither has the certificate of costs been set aside consequently there is no justification to decline to issue the orders sought.
11. However, as regards interest, it suffices to note that the provisions of section 51 (2) of the Advocates Act do not provide for interest. But Rule 7 of the Advocates Remuneration Order states 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.
12. In this matter, a perusal of the court record reveals that, the bill of costs and a notice of taxation was served upon the respondent on 12th March, 2024 as evidence by an affidavit of service sworn by Arasa Kinara on 13th March, 2024.
13. Therefore, the applicant can only get interest from the period of one (1) from the date of service of the same being the 13th day of April, 2024. Therefore, the interest is payable from that date till payment in full.
14. In conclusion, I enter judgment for the appellant in the sum of Kshs. 235,705 plus interest at 14% from 13th April 2024 until payment in full. Costs of the application are awarded to the applicant.
15. Those then are the orders of the court.

DELIVERED, DATED AND SIGNED ON THIS 16TH DAY OF SEPTEMBER, 2024

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Magatta for the applicant.

N/A for the respondent

Mr. Komen Court Assistant

