



**Musangi p/a Mukite Musangi & Co Advocates v Britam General Insurance Company Ltd  
(Miscellaneous Civil Application 87 of 2018) [2023] KEHC 3435 (KLR) (17 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3435 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CIVIL APPLICATION 87 OF 2018**

**GL NZIOKA, J**

**APRIL 17, 2023**

**BETWEEN**

**ANDREW MUKITE MUSANGI P/A MUKITE MUSANGI & CO  
ADVOCATES ..... APPLICANT**

**AND**

**BRITAM GENERAL INSURANCE COMPANY LTD ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated February 1, 2023, brought under the provisions of section 51(2) of the *Advocates Act*, Order 51 Rule 1 of the *Civil Procedure Rules*, sections 1A, 1B and 3A of the *Civil Procedure Act* and Article 159 (2) (b) & (d) of the *Constitution* of Kenya, the Applicant is seeking for the following orders: -
  - a. That judgment be entered for the Applicant against the Respondent for the sum of; Kshs 103,677.00 being the Advocates taxed and certified costs in Naivasha HCMA No 87 of 2018.
  - b. That the Applicant be awarded interest at 14% per annum, from January 15, 2019 (being the 30<sup>th</sup> date from the date on which the Bill of Costs was served upon the respondent) as provided for under Rule 7 of the Advocates Remuneration Order.
  - c. The Applicant be at liberty to execute against the Respondent.
  - d. The respondent pays the costs of this application.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Omweri Jairus Makora, an Advocate in the Applicant's firm, in which he deposes that, the Respondent retained the Applicant's services on September 5, 2014, to enter and defend the suit in Naivasha CMCC No 418 of 2014, which instructions the Applicant actioned, and judgment in the suit was delivered on October 4, 2017.



3. That the Applicant delivered its Advocate-Client Bill of Costs on November 23, 2018 and was taxed on February 21, 2019. A ruling was delivered on March 14, 2019, in which the bill of costs was taxed at Kshs 103,677 resulting in the Certificate of Costs, which was served upon the Respondent to settle the certified amount.
4. That, the Certificate of Costs issued on April 18, 2019 is final and conclusive on the costs payable to the applicant unless the same is set aside by the court. However, the same remains unchallenged as no Reference has been filed and that the retainer between the parties is not disputed. As such the Respondent is truly indebted to the Applicant.
5. Further, the applicant is entitled to costs pursuant to Rule 7 of the Advocates Remuneration Order, accruing from the expiry of one month from the delivery of the applicant's bill of costs to the Respondent. That, the bill of costs was served upon the Respondent on November 23, 2018 and the interest started accruing from January 15, 2019 to payment in full.
6. The application was considered and ordered to be served for directions inter parties on February 13, 2023. On the material date, the Respondent was not in court, despite having been served as evidenced by an affidavit of service dated February 10, 2023, sworn by George Isogo, the process server. In that case the application is unopposed.
7. Be that as it may, the law on entry of judgment is premised on the provisions of section 51(2) of the Advocates Act, (Cap 16) Laws of Kenya. The provisions thereof 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.'
8. In the circumstances, as the certificate has not been set aside and there is no dispute to the retainer, I allow the application as prayed for in prayers (1) and (4).
9. I note that the provisions of section 51 (2) 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.'
10. Be that as it may, the issue of interest should have been considered during the taxation of the bill. However, costs of this application are allowed.
11. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 17<sup>TH</sup> DAY OF APRIL, 2023**

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Mr. Makora for the Applicant

N/A for the Respondent



**Ms Ogutu: Court Assistant**

