



**Sophie Chirchir t/a Cheronno Chirchir & Co. Advocates v Africa
Merchant Assurance Co.Ltd (Miscellaneous Civil Application
224 of 2019) [2023] KEHC 18832 (KLR) (14 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 18832 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION 224 OF 2019**

A MSHILA, J

APRIL 14, 2023

BETWEEN

**SOPHIE CHIRCHIR T/A CHERONO CHIRCHIR & CO.
ADVOCATES APPLICANT**

AND

AFRICA MERCHANT ASSURANCE CO.LTD RESPONDENT

RULING

Introduction

1. The Notice of Motion filed by the Applicant for determination by the court is dated October 13, 2022. The application is brought under section 55(2) of the *Advocates Act*, paragraph 7 of the *Remuneration Order* and Order 51 rule 1 of the *Civil Procedure Rules*, seeking the orders that:
 - a. Judgment be entered for the Applicant against the Respondent in the sum of Kshs. 97,809.60/ = plus interest thereon at 14% per annum from May 28, 2020 until payment in full.
 - b. The costs be provided for.
2. The application is premised on the grounds that the Bill of Costs dated June 3, 2019 was taxed on May 28, 2020, a Certificate of Taxation was issued on September 2, 2022. The retainer is not disputed, the taxation and the certificate of taxation have not been altered.
3. The application is supported by the annexed affidavit of Sophie Chirchir which reiterates the grounds of the application and deposes that no appeal has been preferred on the amount taxed.



Issues for Determination

4. After reading the application and the supporting affidavit the only issue for determination is whether the application is merited for the court to enter judgment in the sum of Kshs. 97,809.60/=.

Analysis

5. At the hearing of the application Mr. Mbabu counsel for the applicant argued the application is unopposed, and urged the court to enter judgment plus costs.
6. The Respondent despite being served failed to respond to the application, the application as filed is uncontested.

7. Section 51(2) of the *Advocates Act* provides:-

“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 recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs.”

8. The wordings of the above section empower the court to enter judgment on the taxed amount if the same is uncontested.

9. In determining whether the court should adopt the amount on the certificate of costs as the judgment of the court it should be satisfied that the certificate of taxation has not be set aside. I place reliance in the case of: *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR where the court observed that:-

“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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on November 25, 2012.”

10. On the other hand, the applicant seeks the court to grant interest at the rate of 14% from the date of the ruling if taxation on May 28, 2020 until payment in full.

11. The applicant has not demonstrated to the court that the issue of interest was raised to the respondent when filing the bill of costs, the applicant has also failed to demonstrate that the certificate of costs was ever served upon the respondent.

12. Rule 7 of the *Advocates Remuneration Order* provides that:

“An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”



13. The above rule stipulates the interest starts to calculate after the expiration of one month from the delivery of the bill to the client. The applicant became aware of the taxation on October 9, 2020, despite ruling having been slated for April 9, 2020 but was rescheduled to May 28, 2020.
14. In *Kitibi & Company Advocates v Menengai Downs Limited*, Misc. Application No. 1069 of 2013, Mabeja J. held as follows, when giving effect to Rule 7 of the Advocates Remuneration Order:-
- “In view of the foregoing, once a judgement is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For the Advocate to be able to recover this, there must be evidence on record, on the date when the bill was served upon the client.”
15. In the upshot despite the application being uncontested this court finds the prayer for interest fails as prayed. The only time the applicant has demonstrated to have notified the Respondent on the issue of the 14% Per interest is on service of the current application dated October 13, 2022, and not when the Bill was served thus this court reiterates that the claim for interest is not merited.

Findings and Determinations

16. In the light of the foregoing this court makes the following findings and determination;
- i. This court finds the application to be partially meritorious;
 - ii. The application dated October 13, 2022 be and is hereby allowed.
 - iii. Judgment be and is hereby entered in favour of the Advocate in the sum of **Kshs. 97,809.60/=** as per the Certificate of Taxation dated September 2, 2022.
 - iv. There shall be order as to interest at fourteen (14%) per cent per annum and no order as to costs.
- Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU this 14TH DAY OF APRIL, 2023

HON. A. MSHILA

JUDGE

In the presence of:

Mourice – Court assistant

Muuu holding brief for Mbabu for Applicant

