



**Friends Church (Quakers) Nairobi Yearly Meeting v Onsongo & Company
Advocates (Miscellaneous Civil Application 124, 125, 126 & 127-147-156 of 2019
(Consolidated)) [2023] KEHC 17225 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION 124, 125,
126 & 127-147-156 OF 2019 (CONSOLIDATED)**

RE ABURILI, J

MAY 5, 2023

BETWEEN

FRIENDS CHURCH (QUAKERS) NAIROBI YEARLY MEETING ... APPLICANT

AND

ONSONGO & COMPANY ADVOCATES RESPONDENT

RULING

1. The application by way of Notice of Motion dated March 30, 2023 which is supported by an affidavit sworn by Richard BO Onsongo Advocate seeks orders that the orders made and or issued herein do apply to Kisumu HC Misc Application Nos 125 of 2019 to 156 of 2019 (excluding MISC APPL No 133 of 2019 and 147 of 2019) as all the included matters relate to the same parties and in line with the orders of the court made on March 17, 2023.
2. Secondly, that Kisumu HC Misc Application No 124 of 2019 be and is hereby consolidated with Kisumu Misc Application Nos 125 of 2019 upto 156 of 2019 (excepting Misc Application Nos 133 of 2019 and 147 of 2019) to facilitate execution of the decrees in each of the separate files.
3. Third, that judgment be and is hereby entered for the Advocate/Applicant against the Client/Respondent in the sum of Kshs 31,500/= only in this application and in each of the following application Nos 125 of 2019 – 156 of 2019 except Nos 133 of 2019 and 147 of 2019 as per the Certificate of Costs dated March 17, 2023 and issued on May 31, 2023 by the Deputy Registrar of the court.
4. That interest on the aforesaid amounts at court rates 14% per annum, is awarded with effect from the date of filing of the Bill of Costs until payment in full; and finally, costs of this application shall be borne by the Respondent/Client.



5. The application is predicated on the grounds on the face of the Notice of Motion and the Supporting Affidavit by the Applicant/Advocate, Mr Richard B Onsongo. The facts of this matter are that the matters listed in the application are between the same parties, advocate and client respectively.
6. The advocates/applicants filed their respective bills of costs against the client, which costs were taxed by the Deputy Registrar on August 27, 2020 at Kshs 48,459/=.
7. The Client was aggrieved by the taxation and filed a Reference pursuant to Paragraph 11 of the Advocates Remuneration Order and Section 52 of the Advocates Act.
8. The Reference in each of the 32 files were heard and determined by this court vide its Ruling rendered on March 17, 2023 wherein the court allowed the Reference dated November 19, 2020, reviewed and set aside and substituted the taxing Master's order taxing the advocate's costs at Kshs 48,459/= with an order that the taxed costs shall be Kshs 31,500 plus VAT.
9. The above order applied to all the Reference files which were similar, being Misc Application Nos 125 – 156 of 2019.
10. This court also directed that fresh certificate of taxation do issue and on March 31, 2023, the Deputy Registrar issue fresh Certificate of Costs for each of the bills as per the Reference Ruling.
11. The Advocate/Applicant has now filed his application for judgment to be entered in the respective files, adoption of the Certificate of Taxation as Judgment of the court and decree to issue. This is in line with Section 51(2) of the Advocates Act.
12. He also prays for consolidation of the listed matters so that only one decree issues for ease of execution. He further prays for interest at 14% p.a from date of filing of the Bills of Costs until payment in full.
13. The Respondent/Client did not file any Replying affidavit or grounds of opposition. Counsel for the Respondent nonetheless appeared on the hearing date and both counsel for the respective parties agreed that the costs of this application should not be awarded. They submitted that the court proceeds to make the other orders as prayed except that it should pronounce itself on the issue of Interest which they had not agreed on.

Determination

14. I have considered the application dated March 30, 2023, the grounds and supporting affidavit.
15. It is not in doubt that on March 17, 2023, this court determined the Client's Reference reviewing the Advocate's taxed costs to Kshs 31,500/= plus VAT in each of the 32 case files being Misc Application Nos 124 – 156 of 2019 and directing the Deputy Registrar to issue fresh Certificate of taxation of Costs in the said matters to reflect the new figures.
16. The Deputy Registrar has since complied with that order and the advocate has equally complied with the order to file an application for adoption of the Certificate of taxation of Costs as judgment of this court.
17. It is also apparent that no appeal has been lodged to challenge the Ruling of March 17, 2023 as stipulated in Paragraph 11 of the Advocates Remuneration Order.
18. As it is convenient and expedient to have the matters listed herein concluded after they are consolidated, I hereby allow the prayer for consolidation of this matter with all the other 31 matters namely; Misc Application Nos 125 of 2019 – 156 of 2019 and order that the Ruling in this matter shall apply to all



the other 31 matters, Misc Application Nos 125 of 2019 – 156 of 2019 except Misc Application No 133 of 2019 and Misc Application No 147 of 2019.

19. Consequently, I hereby order for consolidation of all the Certificates of taxation issued by the Deputy Registrar in all the HC Misc Application No 124 – 156 of 2019 except 133 and 147 of 2019 and adopt them as judgment of this court as stipulated by Section 51 of the *Advocates Act*.

20. I further enter judgment for the Advocate/Applicant BO Onsongo & Company Advocates against the Client/Respondent, Friends Church (Quakers Nairobi Yearly Meeting in the sum of Kshs 31,500/= together with VAT of 16% in each of the listed case files.

21. The total sum for each file of the 31 files which are hereby consolidated is Kshs 36,540/= (inclusive of VAT) making a total of Kshs 36,540 x 30= Kshs 1,096,200/= (One Million and ninety-six thousand, two hundred only.

22. On the issue of interest, the Advocate/Applicant has urged the court to award interest from the date of filing of the Bills of Costs until payment in full, and in accordance with Rule 7 of the Advocates Remuneration Order.

23. Rule 7 of the Advocates Remuneration Order provides that:

' An Advocate may charge interest at 14% per annum on his disbursement and cost, whether by scale or otherwise, from the expiration of one month from the delivery of his Bill to the client, providing such claim of interest is raised before the amount of the bill has been paid or tendered in full.'

24. In *Otieno Ragot & Company Advocates vs Kenya Airports Authority (2021) eKLR* the Court of Appeal citing the provisions of Rule 7 above stated as follows:

' As such, the rule deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a fee note. It is patently clear from the rule that interest begins to accrue from expiry of one month from the date of delivery of the bill or fee note. The learned Judge's reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.'

25. The Court of Appeal also reviewed the advocate's Bill of Costs and observed that it did not disclose that the Applicant included a charge for 'interest at 14% per annum on his/her disbursements and cost' in the Bill of Costs.

26. The Court of Appeal then stated as follows:

' As the sole basis upon which computation of amounts due to an applicant are determined by the taxing officer, the element of interest defined by Rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of Rule 7, and instead render the bill liable to an exercise by the court of its discretion under Section 26 of the *Civil Procedure Act*. Though the Judge was entitled to exercise his discretion to award interest, there was no basis established for awarding the Appellant interest at 14% per annum from the date of the Bill of Costs until payment in full. For this reason, I consider it necessary to interfere with the award on interest.'



27. The above decision is clear that where the advocate has not indicated that he will charge interest at 14% per annum from the date of delivery of the bill to a client and where there is no inclusion of the interest chargeable in the bill, then the court would not apply Rule. The Court would exercise discretion under section 26 of the *Civil Procedure Act* in awarding interest and the rate.
28. I have perused the Advocate's/Applicant's Bill of Cost as filed in court in each of the 31 files listed hereinabove. I find that the said Bill of Costs did not comply with the above decision of the Court of Appeal in Otieno, Ragot & Company Advocates vs Kenya Airports Authority (Supra) for reasons that the Bills of Costs did not include or disclose that the Applicant was entitled to 14% interest per annum on his disbursements and costs. In addition, the advocate has not filed any letter addressed to the client wherein he delivered the bill and included the demand for 14% per annum interest.
29. In addition, I have not seen the letter written to the Client/Respondent prior to filing of the Bills of Costs wherein the client was being notified that the advocate would charge interest or interest would accrue on the itemised bill of costs at 14% per annum from expiry of one month from the date of delivery of the bill or fee note.
30. This is not to say that there was no bill or fee notes send to the client by the advocate but that the claims for settlement of the bills did not include the 14% interest rate either before or after the filing of the same into court.
31. For the above reasons, I find and hold that the Advocate's/Applicant's/Clients Bills of Costs and therefore Certificate of Taxation as adopted as Judgment of this court in the 30 consolidated files shall attract interest at the court rate subject to the provisions of section 26 of the *Civil Procedure Act* which gives this court the discretion to award reasonable interest on a money decree in the following terms:
- ' (1) Where and in so far as a decree is for payment of money, the court may, in the decree, order interest at such rate as the court may deem reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.
- (2) Where such a decree is silent with respect to payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.'
32. The above section 26 empowers the Court to award a reasonable rate of interest to be paid on the principal amount in three situations: interest from the date of the suit to the date of the decree; interest for any period before the institution of the suit and thirdly; interest on the aggregate sum, from the date of the decree to the date of payment or to such earlier date as the Court thinks fit.
33. In this court's, interest on the aggregate amount, from the date of the decree until either the date of payment or until such earlier date as set by the court at the rate of 12% per annum is reasonable.
34. I therefore order that the advocate shall have interest at the rate of 12% per annum to take effect from the date of taxation which in the instant case was March 17, 2023 until payment in full. This is because this court set aside the initial taxation and substituted it with afresh taxation order upon which the



Deputy Registrar issued a fresh certificate. I further order that the certificates of taxation in all the listed matters which were erroneously issued as certificates of costs be reissued as a consolidated certificate of taxation.

35. As the parties agreed that each party should bear their own costs of this application, I hereby order that each party shall bear their own costs of the application.
36. A consolidated decree to issue for the sum of Kshs 1,096,200= plus interest at 12% p.a from March 17, 2023 until payment in full.
37. I so order, and direct that this file be placed before the Deputy Registrar for issuance of decree to the parties within four (4) days of this Ruling. Mention on June 7, 2023 to confirm settlement of decretal sum.
38. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 5TH DAY OF MAY, 2023

R. E. ABURILI

JUDGE

