



**Muri Mwaniki & Wamiti Advocates v James Kamau Njendu t/
a Githutho Associates (Miscellaneous Civil Application 68 of 2016)
[2023] KEHC 17297 (KLR) (Civ) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION 68 OF 2016

CW MEOLI, J

MAY 4, 2023

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

JAMES KAMAU NJENDU T/A GITHUTHO ASSOCIATES RESPONDENT

RULING

1. For determination is the motion dated May 24, 2022 by Muri Mwaniki & Wamiti Advocates (hereafter the Applicant) and expressed to be brought under the provisions of Section 51(2) of the Advocates Act, Paragraph 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules among others. The motion seeks judgment against the Respondent in the the sum of Kshs 854,708/- being costs certified by the Deputy Registrar on December 09, 2018; and interest on the taxed costs at the rate of 14% per annum from April 18, 2016 being the date one (1) month after service of the bill of costs on James Kamau Njendu t/a Githutho Associates (hereafter the Respondent) pursuant to Paragraph 7 of the Advocates Remuneration Order 2009 as follows (a) interest on the sum of Kshs 384,903/- from April 18, 2016 to January 11, 2022; (b) interest on the sum of Kshs 184,903/- from April 18, 2016 till February 01, 2022; and (c) interest on the sum of Kshs 284,902/- from April 18, 2016 till payment in full. The motion is supported by the grounds on the face thereof and the affidavit of Martin G Mwaniki an advocate practicing as such in the firm of Muri Mwaniki & Wamiti Advocates who deposes that he is seized of the subject matter thus competent to swear.
2. The gist of his affidavit is that the Applicant filed an Advocate-Client bill of costs dated February 23, 2016 that was taxed on February 13, 2020 at Kshs 854,708/- and a certificate of taxation was thereafter issued. That a copy of the certificate of taxation was forwarded by a letter dated December 16, 2021 to the Respondent's counsel, after which the Respondent made partial payments of Kshs 384.903/-



on January 11, 2022, Kshs 184,903/- on February 01, 2022 but despite reminders, is yet to settle the balance of Kshs 284,902/- of which remains outstanding. He asserts that the Applicant is entitled to interest on taxed costs at the rate of 14% per annum from April 18, 2016 desirous of commencing execution proceedings against the Respondent which is only possible upon entry of judgment. In conclusion, he asserts that there is no dispute as to retainer between the parties as such the motion ought to be allowed.

3. The motion is opposed by way of a replying affidavit sworn by Respondent. He confirms part payment on January 11, 2022 and February 01, 2022, to the Applicant of Kshs 384,903/- and Kshs 184,903/- respectively, leaving a balance of Kshs 284,902/- which he is in the process of settling. He views the motion as frivolous and incompetent, and the Applicants' claim for interest an afterthought and urges that the motion ought to be dismissed with costs.
4. The motion was canvassed through written submissions. Counsel for the Applicant commenced his submissions by rehashing the contents of the affidavit material in support of the motion. Counsel proceeded to cite Section 51(2) of the *Advocates Act*, the decisions in *Musyoka & Wambua Advocates v Rustam Hira Advocates* [2006] eKLR as cited in *Onsongo & Company Advocates v African Merchant Assurance Company Limited* [2018] eKLR, *Lubullellab & Associates Advocates v N K Brothers Limited* [2014] eKLR as cited in *Waiganjo Wachira & Company Advocates v Pacis Insurance Company Limited* [2019] eKLR *inter alia*, to contend that the certificate of costs issued by the Deputy Registrar has not been varied or set aside; that the retainer is not in dispute, and hence the court ought to enter judgment on the taxed costs.
5. Regarding interest, counsel invoked Paragraph 7 of the Advocates Remuneration Order to submit that 14% interest is chargeable on the taxed costs and ought to apply from April 18, 2016 on the sum of Kshs 384,903/- until January 11, 2022, on the sum of Kshs 184,903/- until February 01, 2022 and on the unpaid balance of Kshs 284,902/- until payment in full. The decision in *Kithi & Comoany Advocates v Menengai Downs Ltd* [2019] eKLR as cited in *Waiganjo Wachira (supra)* was called to aid. The court was urged to allow the motion as prayed.
6. On the part of the Respondent, counsel equally rehashed the affidavit material in opposition to the motion, and asserted that the outstanding amount is Kshs 284,902/-. Citing *Mercy Nduta Mwangi t/a Mwangi Keng'ara & Company Advocates v Invesco Assurance Company Limited* [2017] eKLR he argued that the court's power to award interest on taxed costs is discretionary, that the motion is incompetent because the interest was not allowed by the taxing officer.
7. The Court has considered the rival affidavit material and submissions made in respect of the motion. There is no dispute that the Applicants have a certificate of taxed costs in their favour in the sum of Kshs 854,708/-; that part payment in satisfaction of the taxed costs has been made and that the only sum outstanding thereon is Kshs 284,902/-. The court must determine whether judgment ought to be entered on the taxed costs with interest as sought in the motion.
8. No reference has been filed to challenge the taxed costs, hence the certificate of taxation upon which the motion is premised is final. Section 51(2) of the Advocate Act provides as follows:-

“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”.



9. An advocate is entitled to fees and or compensation for work done. The Applicant herein has availed itself of the provisions of Section 51(2) of the Advocates Act rather than filing a suit under Section 48 of the Act which provides *inter alia* that:-

“(1) ...

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.

(3) Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed”

10. Proceedings brought under the ambit of Section 51(2) of the Advocates Act and 51 Rule 1 of the Civil Procedure Rules enhance expediency in the resolution of claims arising from advocate-client taxed costs. In Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR Murgor JA, cited with approval the decision in Lubulellab & Associates Advocates V N K Brothers Limited [2014] eKLR where the court held 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.”

11. The Applicant filed its bill of costs dated June 23, 2016 having served the same on March 18, 2016. The bill was eventually taxed at Kshs 854,708/- and the Respondent settled part of the taxed amounts on January 11, 2022 and February 01, 2022 respectively thereby leaving a balance of Kshs 284,902/- (See;-Annexure JKN-4). Rule 7 of the Advocates Remuneration Order which 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”.

12. Pursuant to the above provision, the Applicant is entitled to levy interest after the expiry of one month from the date of delivery of his bill. It is not in dispute that the Applicant served his bill of costs on March 18, 2016. Therefore, interest on the taxed amount was chargeable from April 18, 2016 until payment in full. The part settlement of the taxed costs on January 11, 2022 and February 01, 2022 is not a bar to the Applicant’s claim of interest accrued on the said sums until the date of part payment and the further accrual of interest on the admitted balance. The Applicant’s motion is therefore merited and is hereby allowed with costs assessed at Kshs 5000/-.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 4TH DAY OF MAY 2023.

C MEOLI

JUDGE

In the presence of:

For the Applicant: Mr Kariuki

For the Respondents: Ms Nganga



C/A: Carol

