



Avedi & Co Advocates v AIG Kenya Insurance Company Limited (Miscellaneous Civil Application E260 of 2021) [2023] KEHC 19114 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E260 OF 2021**

**A MSHILA, J
JUNE 16, 2023**

BETWEEN

AVEDI & CO ADVOCATES APPLICANT

AND

AIG KENYA INSURANCE COMPANY LIMITED RESPONDENT

RULING

Background

1. By a Notice of Motion dated July 18, 2022 and brought under Section 51(2) of the *Advocates Act* Cap 16 Laws of Kenya, Paragraph 7 of The *Advocates (Remuneration) Order*, Order 51 Rule 1 of the *Civil Procedure Rules, 2010* and all other enabling provisions of the law, the applicant sought for an order that Judgment be and is hereby entered for the Applicant as against the Respondent in the sum of Kshs 177,290/=.
2. The application is premised on the grounds that the Applicant's Bill of Costs filed on February 18, 2022 was taxed on May 13, 2022 and allowed in the sum of Kshs 177,290/= where a Certificate of Taxation was issued on June 7, 2022 and the same stands unchallenged.
3. Oscar Avedi swore his affidavit in support of the application where he reiterates the grounds of the application in that the Certificate of Taxation as taxed remains unchallenged the same having been served upon the Respondent on June 17, 2022. He further sought interest on the taxed costs at 14% per annum from the date of filing the Bill of Costs on December 2, 2021.

Issues For Determination

4. Having considered the application and the supporting affidavit and the issues framed for determination are whether the application is merited for the court to enter judgment in the sum of Kshs 177,290/= and whether interest is payable at 14% per annum from 2/12/2021.



Analysis

5. 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.”

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

7. In determining whether the court should adopt the amount on the Certificate of Taxation as the judgment of the court it should be satisfied that the certificate of taxation has not be set aside. Reliance is placed on the case of: *Lubulellab & Associates Advocates Vs 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.”

8. On the other hand, the applicant seeks the court to grant interest at the rate of 14% per annum from the date of filing the Bill of Costs herein on December 2, 2021.

9. 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.”

10. 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 has not demonstrated to the court that the issue of interest was raised to the Respondent when service of the bill of costs was effected on April 4, 2022. Similarly, the issue of interest was not addressed in the applicant’s letter forwarding the Certificate of Taxation for Kshs 177,290/=.

11. In *Kitih Company Advocates Vs Menengai Downs Limited*, Misc. Application No. 1069 of 2013, Mabeya 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.”

12. In the upshot despite the application being uncontested this court is satisfied that the prayer for interest is devoid of merit. The only time the applicant has raised the issue seeking interest on the taxed costs



at 14% per annum from the date of filing the Bill of Costs was when he made the supporting affidavit as such this court reiterates that the claim for interest is not merited.

Determination

13. In the light of the foregoing this court makes the following findings and determination;
- i. This court finds the application to be partially merited and is hereby partially allowed.
 - ii. Judgment be and is hereby entered in favour of the Advocate in the sum of Kshs 177,290/= as per the Certificate of Taxation dated June 7, 2022.
 - iii. There shall be no orders as to costs and interest at fourteen (14%) percent per annum.
- 14 Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 16TH DAY OF JUNE, 2023.

A. MSHILA

JUDGE

In the presence of:-

Mourice – Court Assistant

Lilande for the applicant/advocate

No appearance for the respondent

