



REPUBLIC OF KENYA



Kinyanjui Njuguna & Co Advocates v Xplico Insurance Company Limited (Miscellaneous Application 408 of 2019) [2023] KEHC 19188 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION 408 OF 2019**

A MSHILA, J

JUNE 16, 2023

BETWEEN

KINYANJUI NJUGUNA & CO ADVOCATES APPLICANT

AND

XPLICO INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. Before court is the Notice of Motion dated September 22, 2021 and brought under Order 51 Rule 1 of the *Civil Procedure Rules*, Section 51(2) of the *Advocates Act* (cap 16) and Order 7 of the Advocates (Remuneration) Order (Under Section 48) of CAP 16. The applicant sought for the following orders:-
 - a) That the Honourable Court be pleased to enter Judgment in favor of the Applicant herein, in terms of Certificate of Taxation dated July 30, 2020, in the sum of Kshs 262,798/=.
 - b) That pursuant to prayer 1 above the Honourable court be pleased to enter judgment/decree for Kshs 262,798/=.
 - c) That interest be provided for at 14% per annum from July 28, 2017 until payment in full.
 - d) That the cost of the application be awarded to the applicant.
2. The application is premised on the grounds that the Applicant's Bill of Costs has since been taxed and a Certificate of taxation issued. Nevertheless, the respondent has neglected to pay legal fees and its liquidity crisis is unknown.
3. Kinyanjui Theuri swore his affidavit in support of the application where he reiterates the grounds of the application in that the Bill of costs dated December 4, 2019 was taxed on July 23, 2020 and a Certificate of Taxation was extracted. Interest was said to be payable at 14% per annum from the date of demand and service of notice to settle legal fees which notice is dated July 28, 2017.



Issues for Determination

4. I have considered the application and the supporting affidavit and the issues for determination are whether the application is merited for the court to enter judgment in the sum of Kshs 262,798/= and whether interest is payable at 14% per annum from July 28, 2017.

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. I place reliance in the case of: *Lubulellah & Associates Advocates v NK 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 25th November 2012.”
8. On the other hand, the applicant seeks the court to grant interest at the rate of 14% per annum from July 28, 2017 until payment in full.
9. By the applicant’s letter dated July 28, 2017, the applicant has demonstrated to the court that he did demand and serve his notice towards settlement of the decretal amount plus costs and interest at court rates from the date of judgment as well as settlement of the legal fees. The same was received by the Respondent on August 01, 2017.
10. 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.”
11. The above rule stipulates that such claim for interest must be raised for it to start to accrue after the expiration of one month from the delivery of the bill to the client. The record reflects that the Respondent was served with the Fee Note on July 7, 2020, but having perused the said Fee Note at length nowhere is the claim for interest raised;



12. In the case of *Kerongo & Company Advocates vs Africa Assurance Merchant Co. Limited* [2019] eKLR the court held;

‘An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the Advocates Remuneration Order. As the advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum.’

13. Therefore, in line with Rule 7, the applicant is found to have failed to furnish proof that it had raised the claim for interest with the respondent; the prayer for interest at 14% p.a to start accruing one month after July 7, 2020, is therefore disallowed.

Findings & determination

14. For the forgoing reasons this court makes the following findings and determinations:-

- i. This court finds the application to be partially meritorious; and it is hereby partially allowed;
- ii. The Certificate of Taxation dated July 30, 2020 in the sum of Kshs 262,798/- is hereby adopted as a Judgment of this court. Judgment be and is hereby entered in favour of the Advocate/Applicant in the sum of Kshs 262,798/=. A Decree to issue in respect of the sum and the Applicant shall be at liberty to proceed to execution for recovery of the sum.
- iii. There shall be no order as to interest at 14% p.a as prayed.
- iv. No order as to costs.
- v. Each party shall bear its own costs.

Orders Accordingly.

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

HON. A. MSHILA

JUDGE

In the presence of:

Court Assistant - Mourice

Onyango holding brief for Kinyanjui for Applicant/Advocate

No appearance for the Respondent/Client

