



**Kitulu t/a Muema Kitulu & Co Advocates v Gateway Insurance Co Ltd (Miscellaneous Civil Application 831 of 2014) [2023] KEHC 18441 (KLR) (Civ) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18441 (KLR)

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

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION 831 OF 2014**

**AA VISRAM, J**

**JUNE 5, 2023**

**IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN ADVOCATE-CLIENT BILL OF COSTS**

**BETWEEN**

**MUEMA KITULU T/A MUEMA KITULU & CO.ADVOCATES ..... APPLICANT**

**AND**

**GATEWAY INSURANCE CO LTD ..... RESPONDENT**

**RULING**

1. This ruling relates to the Applicant's Notice of Motion dated March 15, 2022, seeking the following orders:-
  - a. That this Honourable Court be pleased to enter judgment against the Respondent for the sum of Kenya Shillings Seventy Eight Thousand Three Hundred and Four and Five Cents(Kshs 78,304.54/=) only being the taxed and certified costs.
  - b. That this Honourable Court be pleased to award interest at 14% from May 26, 2014 until payment in full.
  - c. That the costs of this Application be borne by the Respondent.
2. The Application is premised on the grounds on the face of the Application and the Supporting Affidavit of Muema Kitulu, the Applicant herein, sworn on March 15, 2022.
3. The Applicant deponed that the Respondent was at all material times their client, and they provided it with legal services, a fact which is not disputed.



4. The Applicant averred costs were duly taxed and the same is dated September 28, 2018, for the amount of Kenya Shillings 78,304.54/=. The Applicant averred that this Application was filed because the Respondent has failed to pay the Applicant's fees.
5. The Respondent filed a Replying Affidavit sworn by Ms Esther Wanjiku Ndungu on September 20, 2022. She deposed that the Respondent was served with a Bill of Costs dated May 26, 2014 for Kshs 197,763.46/= but opposed the same vide its submissions dated December 17, 2021. However, on January 31, 2022, the Bill of Costs was taxed at Kshs 78,304.54/=.
6. The Respondent opposed the prayer for interest because the same was not included in the Bill of Costs dated May 26, 2014, contrary to Rule 7 of the Advocates Remuneration Order.
7. The Application was canvassed by way of written submissions. The Respondent did not file any submissions. Accordingly, the court will rely on the Respondent's Replying Affidavit.
8. The Applicant submitted that the Respondent was represented by an attorney throughout the taxation of the Advocate/Client Bill of Costs. It was aware of the award of costs but despite this, it has refused to make payment.
9. In support of the claim for interest, the Applicant relied on the High Court decision in *Otieno Ragot & Company Advocates v National Bank of Kenya Limited* (2016) Eklr, where the court agreed with the decision on *Muri Mwaniki & Wamiti Advocates v John Ngigi and another* (2014) eKLR and held as follows:-

“My understanding of Rule 7 of the Advocates Remuneration Order is that interest is chargeable from the expiration of one month from delivery of the bill of costs by the advocate to the client but before the amount of the bill has been paid or tendered in full. The reference point is delivery of the bill. Evidence of delivery is necessary. To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the Certificate of Costs but the bill of costs. The amount of the bill may be different from the taxed costs. But for all purposes of rule 7 of the Advocates Remuneration Order, interest should be on the amount in the Certificate of Costs as those are the costs which are payable.”

### **Analysis and determination**

10. To my mind, the sole issue in dispute here is whether or not interest is payable by the Respondent?
11. Rule 7 of the Advocates Remuneration Rules provides when interest may be charged in the following terms: -
 

“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. (emphasis mine)
12. Further, to the above, Section 51 (2) of the *Advocates 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.”

13. It is therefore, clear that where costs have been taxed and certified, and the retainer is not in dispute, the court has discretion to enter judgment for the advocate as against the client for the taxed amount, as the certificate of costs bears finality in respect to the costs owed by the client to the advocate, unless the same is set aside.
14. Further, that interest is payable so long as the claim is raised before the bill has been paid or tendered in full. Here, it is evident that the bill has not been paid in full, or at all at present.
15. I have also considered the affidavits and respective submissions, and it is clear to me that the Certificate of Costs that was issued by the Taxing Officer had not been set aside and/or altered.
16. Based on the reasons above, I am satisfied that the Application is with merit and is allowed with costs. The orders of this court are as follows:-
  - a. Judgment is hereby entered against the Respondent for the sum of Kshs 78,304.54/= being the taxed and certified costs.
  - b. Interest is awarded on the above sum at the rate of 14% and payable from one month after the Bill of Costs was served on the Respondent until payment in full.
  - c. The Applicant shall have the costs of this Application.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 5<sup>TH</sup> DAY OF JUNE 2023**

**ALEEM VISRAM**

**JUDGE**

**In the presence of;**

.....for the Applicant

.....for the Respondent

