



REPUBLIC OF KENYA



**Mwangi Kengara & Co Advocates v Mungai (Miscellaneous Application E682 of 2021)
[2023] KEHC 18860 (KLR) (Commercial and Tax) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E682 OF 2021**

FG MUGAMBI, J

JUNE 16, 2023

BETWEEN

MWANGI KENGARA & CO ADVOCATES ADVOCATE

AND

ZIPORRAH MUNGAI CLIENT

RULING

1. Before the court is an application dated October 12, 2022 brought under section 51(2) of the *Advocates Act*, and Rule 7 of the *Advocates Remuneration (Amendment) Order 1962 (Rev. 2017)* Chapter 16, and Section 1A, 1B, 3A, of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules*, Chapter 21 Laws of Kenya.
2. The application seeks the following orders;
 - i. That this Honourable Court be pleased to enter Judgment in the sum of Kshs 1,388,747.94 cents only, in favour of the advocate/applicant against the client/respondent in terms of the Certificate of Taxation dated July 22, 2022.
 - ii. That the advocate/applicant be awarded interest at the rate of 14% per annum on the sum of Kshs 1,388,747.94 cents with effect from November 28, 2021 to August 23, 2022 and on the sum of Kshs 792,000/= from August 24, 2022 until payment in full.
 - iii. That the costs of this application be awarded to the advocate /applicant.
3. The application is supported by the grounds on the face of it and the supporting affidavit sworn by Mercy Nduta Mwangi and further buttressed by the submissions dated February 9, 2023. The



advocate's case is that the client had instructed the firm to represent her in an arbitration that arose from an investment agreement and guarantee dated March 27, 2017.

4. An arbitral award was published on March 19, 2021 and consequently the advocate filed a bill of costs dated August 31, 2021. The bill of costs was served on the client on September 29, 2021 via email.
5. Subsequently the said bill of costs was taxed at Kshs 1,388,747.94 and a Certificate of Taxation issued on July 22, 2022. It was averred that the client made a partial payment of Kshs 596,747/= leaving a balance of Kshs 792,000/=. The advocate stated that the Certificate of Taxation had not been set aside thus prayed to have judgment entered on the Certificate to enable it recover the taxed costs and interest.
6. In the submissions Counsel stated that part payment of the costs was an admission of the client's indebtedness. With respect to interest, Counsel submitted that the advocate was entitled to interest at 14% per annum on the sum of Kshs 1,388,747.94 from November 28, 2021 up to August 23, 2022 and on Kshs 792,000/= from August 24, 2022 to October 12, 2022.
7. The application was opposed. The client filed a replying affidavit dated January 31, 2023 sworn by Zipporah Mungai and submissions dated February 27, 2023. The respondent observed that the bill of costs was taxed alongside the bill of costs in Misc E683 of 2021 also between the advocate and the client at a grand total amount of Kshs 2,941,982.94. The client denied owing any money to the advocate and stated that she had fully settled the amount in the Certificate of Taxation for this matter in the following terms;
 - i. August 23, 2022 Kshs 596,747/=.
 - ii. October 12, 2022 Kshs 592,000/=.
 - iii. January 25, 2023 Kshs 201,000/=.
8. The client submitted that the court had the discretion to award interest and since the taxed costs were settled before the expiry of 30days, the client urged the court to disallow the interest.

Analysis

9. I have carefully considered the pleadings rival submissions and authorities submitted before the court by the parties. The main issue for determination is as to what amount is due to the advocate from the client (if any) and what rate of interest is due.
10. Section 51 (2) of the [Advocates Act](#) provides that: -

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.

11. In *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR 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.



12. I have perused the record and I can confirm that the bill of costs was taxed at Kshs 1,388,747.94. This is not controverted by the parties. The issue is whether there is any amount due to the advocate and therefore whether judgment should be entered against the client. I note that the client has attached the following cheques as evidence of full payment of the amount due;
- i. Cheque no 001791 for Kshs 596,747 dated August 23, 2022
 - ii. Cheque no 001807 for Kshs 592,000 dated October 12, 2022
 - iii. Cheque number 001821 for Kshs 201,000 dated January 25, 2023
13. I also note that the said cheques were attached to corresponding letters to the advocate and the same were received by the advocate. In fact, the advocate does not deny or controvert this evidence. I therefore find no difficulty in finding that the full amounts due to the advocate have been settled.
14. The court is then left to determine whether the advocate should be awarded interest. Rule 7 of the *Advocates Remuneration Order* allows an advocate to charge interest on his costs and disbursements as follows:
- 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.
15. It is patently clear from the rule that interest begins to accrue upon the expiry of one month from the date of delivery of the bill or fee note. While this court is entitled to exercise its discretion, I concur with the observation of Onguto, J. in *Mercy Nduta Mwangi t/a Mwangi Keng'ara & Company Advocates v Invesco Assurance Company Limited* [2017] eKLR, that, that discretion comes with the power to reduce the period for which interest is payable, altering the rate at which interest is payable and even to withholding the entire interest payable in the interest of justice.
16. Likewise, in the case of *Otieno Ragot & Company Advocates v Kenya Ports Authority*, it was held that although Rule 7 entitled an advocate to claim interest, the time from when interest would run was not stipulated and was therefore left to the discretion of the court.
17. I find that there was no basis established for awarding the interest rate as prayed by the advocate. I also note that upon issuing of the bill of costs to the client there was a dispute on the amount, leading to the taxation of the bill of costs and a Certificate of Taxation issued on July 22, 2022. It is this Certificate that confirmed the actual amount due to the advocate from the client. I would therefore find that the interest payable on the amount can only accrue from the date of the Certificate of Costs since the client was already aware of the fee note.

Determination and orders

18. From the foregoing, the advocate's application succeeds in part to the extent that the court issues the following orders: -
- i. That the amount of Kshs 1,388,747.94 in terms of the Certificate of Taxation dated July 22, 2022 has been settled in full by the respondent.
 - ii. That interest on the amount of Kshs 1,388,747.94 shall be paid at the rate of 14% per annum from July 22, 2022 up to January 25, 2023.



- iii. That since the application has only partially succeeded, the applicant/advocate shall have half of the costs of this application.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 16th DAY OF JUNE 2023.

F. MUGAMBI

JUDGE

Court Assistant: Ms. Lucy Wandiri.

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