



REPUBLIC OF KENYA



**Bwana v Bonaya & 2 others (Election Petition 7 of 2013)  
[2023] KEHC 21318 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21318 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
ELECTION PETITION 7 OF 2013  
SM GITHINJI, J  
JULY 13, 2023**

**BETWEEN**

**BWANA MOHAMED BWANA ..... PETITIONER**

**AND**

**SILVANO BUKO BONAYA ..... 1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION  
(IEBC) ..... 2<sup>ND</sup> RESPONDENT**

**SHAKILA ABDALLA MOHAMED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. For determination is the 3<sup>rd</sup> Respondent's Notice of Motion dated 8<sup>th</sup> June 2022 seeking the following orders;
  1. That the supreme court certificate of taxation dated 23<sup>rd</sup> April 2018 for an amount of Kshs. 4,399,730 be deemed the decree of this Honourable Court.
  2. That interest of 14% to accrue from the date of issue of the certificate of taxation till payment in full.
  3. That costs of this application be provided for.
2. The application is founded on the grounds set out on the face of the application and the sworn affidavit by Joseph M. Munyithya who deposed that the application herein emanates from Supreme Court Petition No. 15 of 2014 Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 Others wherein the respondent filed an appeal against the Court of Appeal's decision in Civil Appeal No. 40 of 2013 which appeal was dismissed with costs to the applicant. Consequently, the applicant filed its Party to Party Bill of Costs dated 19<sup>th</sup> March 2015 and the same was taxed by the Deputy Registrar of the Supreme Court at Kshs. 4,339, 730 on 14<sup>th</sup> December 2017 and a certificate of taxation was issued on 23<sup>rd</sup> April



2018. He stated that the respondent has not filed a reference in regards to the same taxing order and has failed to settle the costs to date.

3. The petitioner did not file a response to the application.

### **Disposition**

4. 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 done with costs”

5. In this matter, I find that the Petitioner was properly served with the Application and as such having not disputed the Certificate of Taxation dated 23<sup>rd</sup> April 2018, I do hereby enter judgment against the Respondent for the said taxed costs of **Kshs. 4,399,730/=**.

6. As to the interest, Regulation 7 of the Advocates (Remuneration) Orders provides that,

“7. An advocate may charge interest at 14 percent 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 such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

7. The wording of this regulation is clear that for an Advocate to charge interest, there must have lapsed a period of one month after the bill was delivered to the Client. The regulation is also specific that the claim for interest should have been raised. Regulation 7 provides that the bill must not only be served but a claim for interest should also be raised by the Applicant. I have perused annexure JMM-6 which was a demand for settlement of the taxed costs and other annexures on record and have noted that there is no evidence that such interest was ever claimed. In such a case, I am not able to make an award for interest.

8. On the issue of costs, courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the case but also the circumstances of each case. The petitioner did not oppose the application and in the circumstances, I direct that each party do bear own costs of this application.

9. Consequently, the application is allowed in the following terms;

- i. Judgment be entered in favour of the Applicant against the petitioner for Ksh 4,399,730/=.
- ii. Each party to bear own costs of the application.

**RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT MALINDI THIS 13<sup>TH</sup> DAY OF JULY, 2023.**

.....

**S.M. GITHINJI**

**JUDGE**

**In the presence/absence; -**

1. Mr Mkomba for the Applicant



2. Mr Aboubakar is for the Respondent (absent)

