



**Mwangi t/a Daniel Henry & Co Advocates v Kagira (Miscellaneous Civil Application E112 of 2021) [2023] KEHC 20258 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20258 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CIVIL APPLICATION E112 OF 2021**

**A MSHILA, J**

**JULY 14, 2023**

**BETWEEN**

**DANIEL GACHAU MWANGI T/A DANIEL HENRY & CO  
ADVOCATES ..... APPLICANT**

**AND**

**SAMUEL KIARII KAGIRA ..... RESPONDENT**

**RULING**

**Background**

1. Before court is the Notice of Motion dated August 25, 2022 and brought under Sections 1A & 1B of the *Civil Procedure Act*, Section 51(2) of the *Advocates Act* and Order 51 Rule 1 of the *Civil Procedure Rules*. The Applicant sought for the following orders:-
  - a. That Judgment be entered for the Applicant against the Respondent in the sum of Kshs 139,750/= with interest thereon at 14% per annum from February 3, 2022 pursuant to Certificate of Taxation dated February 24, 2022 until payment in full.
  - b. That the costs of this application be provided for.
2. The application is premised on the grounds that the Advocate-Client Bill of Costs dated April 28, 2021 was taxed and a Certificate of taxation was issued on February 24, 2022. That the retainer is not disputed though the Respondent has refused to pay hence the application should be granted for justice to be served.
3. Daniel Gachau Mwangi swore his affidavit in support of the application. He deposed that judgment be entered as prayed as the Certificate of Taxation issued on February 24, 2022 for Kshs 139,750/= was duly served upon the Respondent but the respondent has refused/neglected and or failed to pay.



## Issues for Determination

4. Having considered the application and the supporting affidavit, the issues for determination are whether the application is merited for the court to enter judgment in the sum of Kshs 139,750/= and whether interest is payable at 14% per annum from February 3, 2022.

## Analysis

5. The applicable law is found at 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. Refer to the case of: *Lubulellah & 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. Upon perusal of the court record this court has noted that there is no reference filed against the ruling nor any application to set aside alter or vary the ruling and is satisfied that there is no other action commended from the court save but to enter judgment.
9. On the second issue, the Applicant seeks the court to grant interest at the rate of 14% per annum from February 3, 2022 until payment in full.
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. Having perused the court record at length nowhere is there evidence of a demand letter served upon the Respondent claiming or notifying him of such claim.



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. No demand letter was annexed to the application therefore the Applicant has not demonstrated to this court that it demanded and served notice upon the Respondent towards settlement of the legal fees.
14. 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% pa to start accruing one month after February 3, 2022; it therefore follows that this claim is disallowed.

### **Findings & Determination**

15. 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; The Certificate of Taxation dated February 24, 2022 in the sum of Kshs 139,750/= is hereby adopted as a Judgment of this court.
  - ii. Judgment be and is hereby entered in favour of the Advocate/Applicant in the sum of Kshs 139,750/=. 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.

Orders Accordingly

**DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 14<sup>TH</sup> DAY OF JULY, 2023.**

**A. MSHILA**

**JUDGE**

**In the presence;**

Mourice – Court Assistant

N/A – by Applicant

N/A – by Respondent

