



**Mugendi Karigi & Co. Advocates v Njeru (Miscellaneous Application
24 of 2022) [2023] KEHC 19528 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS APPLICATION 24 OF 2022
LM NJUGUNA, J
JULY 3, 2023**

BETWEEN

MUGENDI KARIGI & CO. ADVOCATES APPLICANT

AND

DANIEL NGARI NJERU RESPONDENT

RULING

1. The application before the court is dated September 15, 2022 wherein the applicant seeks for orders that:
 - i. This Honourable Court be pleased to enter judgment in favour of the applicant for taxed costs of Kenya Shillings One Hundred and Twenty One Thousand, One Hundred and Fifteen(Kes 121,115.00)
 - ii. The respondent be condemned to pay costs of this application.
2. The application is premised on the grounds on its face and it's supported by the affidavit of the applicant.
3. The applicant's case is hinged on the fact that the respondent owes the advocate /applicant Kes 121, 115 being taxed costs. That the respondent has failed to pay the costs despite demand for payment of the same. That the interest of justice demands that the application herein be allowed.
4. The court gave directions that the application be canvassed by way of written submissions and both parties complied with the directions.
5. The applicant submitted that he filed the application herein for the court to enter judgment in his favour for taxed costs of Kes 121,115.00 against the respondent. Reliance was placed on section 51(2) of the *Advocates Act*. The applicant submitted that at the time of filing the application herein, the certificate of costs dated September 12, 2022 issued by the Deputy Registrar had not been altered and/



or set aside and no reference had been filed by the client/respondent. Reliance was placed on the case of *Lubulellah & Associates Advocates Vs N.K. Brothers Limited* [2014] eKLR. That the respondent sought to respond to the application herein vide an application to set aside and /or quash the certificate of taxation, which application was expunged from the record. It was therefore prayed that the application herein be allowed as the respondent has not filed any reference as provided for under Section 51 of the *Advocates Act* and Rule 11 of the Advocates Remuneration Order. Further reliance was placed on the case of *Daniel Toroitich arap Moi Vs Mwangi Stephen Muriithi & another* [2014] eKLR. In the end, this court was urged to allow the application herein.

6. The respondent opposed the application but conceded that, indeed, he sought for the services of the applicant herein in Civil Case 205 of 2017 at the Chief Magistrates Court and it was verbally agreed that the respondent was to pay Kes 55,000.00 as legal fees. That in honour of the agreement, the respondent paid an amount of Kes 44,000.00 as deposit for legal fees leaving a balance of Kes 10,600.00 which was to be paid after the case has been heard and determined and orders on costs given. He confirmed he was served with the Bill of Costs but contended that the name indicated thereon was Daniel and not David, and therefore, he is not obligated to pay the taxed amount as was determined by the Tax Master.
7. I have considered the application herein and the submissions by the parties and I find that the sole issue for determination is whether the orders sought herein should issue.
8. The applicant relied on the provisions of Section 51(2) of the *Advocates Act* Cap 16 (Laws of Kenya) which empowers the court to enter judgment on taxed costs in favour of an advocate. The respondent on the other hand argued that there was an agreement between him and the applicant albeit oral agreement. That the legal fees was agreed at Kes 44,000.00 out of which he paid Kes 33,400.00 leaving a balance of Kes 10,600.00 to be paid after the case has been heard and determined and orders on costs given.
9. The applicant relied on the case of *Lubulellah & Associates Advocates Vs N.K. Brothers Limited* [2014]eKLR which was cited by the Court of Appeal in the case of *Otieno, Ragot & Company Advocates Vs Kenya Airports Authority* [2021] eKLR where it was held that once a certificate of costs was issued and there was no reference against the decision of the taxing master, and the certificate of costs had not been set aside and/or altered, no other action was required save for entry of judgment by the court and that no suit for recovery of costs was required.
10. The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:
 - a. The costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
 - b. The Certificate of Costs has not been set aside or stayed or a reference filed upon it; and
 - c. There is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.
11. The Court takes into consideration that the Certificate of Taxation dated September 12, 2022 has not been set aside or impugned in any way, by the respondent.
12. This position was reiterated in *Lubulellah & Associates Advocates versus 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 12.09.2022.”

13. From the material placed before this court, I find that this is a suitable case for it to exercise its discretion in favour of the applicant and therefore proceed to enter judgment against the respondent for the certified sum.
14. Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at fourteen (14%) until payment in full. The applicant relied on the case of *Makbecha and Company Advocates Vs Central Bank of Kenya* [2020] eKLR where the court held that Rule 7 of the Advocates Remuneration Order entitles an advocate to charge interest above the normal or applicable rate of (12%) per cent provided that the claim for interest was raised before payment or settlement of the advocate’s bill of costs.
15. Notably, several courts have held that the court has the discretion to determine when interest ought to run. In the case of *Otieno Ragot & Company Advocates Vs Kenya Ports Authority (Supra)*, 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.
16. In the case of *D. Njogu & Company Advocates Vs Kenya National Capital Corporation* [2006] eKLR, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court explained that the “correct fee note” meant a bill that was in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client did not dispute, or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.
17. This court takes the respectful view that Rule 7 of the Advocates Remuneration Rules is clear that interest is chargeable at (14%) per annum, from the expiration of one month from the delivery of the bill to the client. There is, therefore, a reference point from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
18. In the case herein, the defendant was made aware of the Bill of Costs on July 21, 2022. Bearing in mind the holding of *D. Njogu & Company Advocates Vs Kenya National Capital Corporation (Supra)* which this court fully associates itself with, this court comes to the firm conclusion that the one (1) month envisaged in Rule 7 of the Advocates Remuneration Order lapsed on August 21, 2022. Interest would thus accrue on the certified costs from August 21, 2022.
19. The upshot of this court’s ruling is that the Advocate’s Notice of Motion application dated September 15, 2022 is merited and the same is hereby allowed as follows:
 - i. Judgment be and is hereby entered in favour of the applicant in the sum of Kenya Shillings One Hundred and Twenty One Thousand, One Hundred and Fifteen(Kes. 121,115.00) together with interest thereon at fourteen (14%) per cent per annum calculable after thirty (30) days from the date when the bill of costs was served upon the respondent.
 - ii. Costs of this application are awarded to the applicant.
20. It is so ordered.

Delivered, dated and signed at Embu this 3rd day of July, 2023.



L. NJUGUNA
JUDGE

