



Stephen Oddiaga & Co Advocates v Mwakibibo (Miscellaneous Civil Application 546 of 2008) [2023] KEHC 22189 (KLR) (7 July 2023) (Ruling)

Neutral citation: [2023] KEHC 22189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 546 OF 2008**

F WANGARI, J

JULY 7, 2023

IN THE MATTER OF: THE ADVOCATES ACT CAP 16 LAWS OF KENYA

AND

**IN THE MATTER OF: STEPHEN ODDIAGA T/
A STEPHEN ODDIAGA & COMPANY ADVOCATES**

BETWEEN

STEPHEN ODDIAGA & CO ADVOCATES APPLICANT

AND

HAMADI JUMA MWAKIBIBO RESPONDENT

RULING

1. The Applicant vide an application dated November 18, 2022 and filed on date November 21, 2022 sought for the following orders: -
 - a. That judgment entered for Kshs 490,000 awarded as taxed costs plus costs and interest at 14% from November 27, 2008 to November 27, 2014, a period of six years
 - b. That the costs of the application be provided for.
2. The application was based on grounds inter alia that the taxed costs were never satisfied, and that the Respondent was not willing to pay the costs awarded. The application was served upon the Respondent and an affidavit of Service dated March 3, 2023 was filed.
3. The Respondent did not file his response. The matter was fixed down for hearing. Hearing notice was issued, but he did not appear. The application was heard ex-parte.



Analysis and Determination

4. I have considered the application, the supporting affidavit and the annexures thereto;
 - a. Whether the application is meritorious;
 - b. What is the order as to costs?
5. I have perused through the proceedings. On November 26, 2008, a consent signed by the Applicant and the Counsel for the Respondent, and which was dated November 25, 2008 was entered as the orders of the court. The contents of the consent were to have the Bill of Costs dated November 17, 2008 be taxed at Ksh. 490,000 all inclusive.
6. Section 51 (2) of the *Advocates Act* reads: -

‘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’.
7. Rule 7 of the *Advocates (Remuneration) Order* provides that: -

‘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.’
8. As stated herein above, the costs were taxed via a consent order dated November 26, 2008. The same has not been set aside. The issue now is the interest payable. From Rule 7 of the Advocates Remuneration Order, the Applicant is entitled to interest of costs at a rate of 14% per annum after the expiration of one month from the delivery of the bill of costs to the client.
9. From the consent order, the taxed costs of Ksh 490,000 was all inclusive. Therefore, interest in this case starts to run from the date when the certificate of costs was issued i.e November 27, 2008.
10. Section 4 (4) of the *Limitation of Actions Act* provides as follows;

‘An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due’
11. From the above, interest is only payable up to a maximum period of 6 years from when it became due. The Applicant is therefore in order in seeking interest from the time it became due to November 27, 2014 a period of 6 years.
12. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh*



Rai Estate of 4 others [2013] eKLR. In the present circumstances, I thus see no reason why I should deny the Applicant costs of the application.

13. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. The Certificate of Costs issued to the applicant, as against the respondent dated November 27, 2008 is hereby converted into a judgement and decree of this court and consequently, a judgement is entered for the applicant against the respondent, for Kshs 490,000.
 - b. Interest on (a) above do accrue at the rate of 14% per annum, with effect from November 27, 2008 to November 27, 2014, a period of 6 years.
 - c. Costs awarded to the applicant.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 7TH DAY OF JULY, 2023.

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F. WANGARI

JUDGE

In the presence of:

Mwanzia Advocate h/b for Oddiaga Advocate for the Applicant

N/A for the Respondent

Barile, Court Assistant

