



**V.Chokaa & Co. Advocates v County Government of Mombasa  
Successor of Municipal Council of Mombasa (Miscellaneous Application  
E121 of 2022) [2023] KEHC 22191 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22191 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E121 OF 2022  
F WANGARI, J  
JULY 14, 2023  
IN THE MATTER OF THE ADVOCATES ACT  
AND  
IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT  
BETWEEN  
V.CHOKAA & CO. ADVOCATES ..... APPELLANT  
AND  
COUNTY GOVERNMENT OF MOMBASA SUCCESSOR OF MUNICIPAL  
COUNCIL OF MOMBASA ..... RESPONDENT**

**RULING**

1. The ruling is in respect of the Notice of Motion dated January 23, 2017. The application seeks the following orders: -
  - a. That judgment be entered for the Applicant against the Respondent in the sum of Ksh 191,592.20 with interest therein at 14% per annum in accordance with the Certificate of Taxation and issued herein on January 15, 2017.
  - b. Costs be provided.
2. Unlike in a related case Mombasa High Court Misc App No, E120 of 2022 involving the same parties, the Respondent did not file Grounds of Opposition. The Grounds of Opposition were that the miscellaneous file upon which the said application was filed, became spent once the bill of costs was taxed. hence no legal basis of filing the said application in the same file.



3. Even though similar Grounds of Opposition would have been filed, the same would have been dismissed. I am however fully aware of rulings by the High Court and Courts of equal status stating that a fresh suit ought to be filed for purposes of having the Certificate of Costs entered as judgment
4. In the absence of a Replying Affidavit or Grounds of opposition filed by the Respondent, it is deemed that the application was not opposed.

### **Analysis and Determination**

5. 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?
6. The Bill of Costs against the Respondent was taxed at a sum of Ksh 191, 592.20 and a Certificate of Taxation issued on January 10, 2017. 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. The Certificate of Taxation having 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. Interest in this case starts to run from the date when the certificate of costs was issued i.e. January 10, 2017.
9. 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’
10. From the above, interest is only payable up to a maximum period of 6 years from when it became due. In this case, interest accrues from January 10, 2017 to January 10, 2023, a period of 6 years.
11. 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.



12. 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 January 10, 2017 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 191, 592.20.
  - b. Interest on (a) above do accrue at the rate of 14% per annum, with effect from January 10, 2017 to January 10, 2023, a period of 6 years.
  - c. Costs awarded to the applicant.

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

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**F. WANGARI**

**JUDGE**

**In the presence of:**

Chokaa Advocate for the Applicant

Murongi Advocate for the Respondent

Abdullahi, Court Assistant

