



**V Chokaa & Co Advocates v County Government of Mombasa
Successor of Municipal Council of Mombasa (Miscellaneous Application
E120 of 2022) [2023] KEHC 22232 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E120 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 23/1/2017. The application seeks the following orders: -
 - a. That judgment be entered for the Applicant against the Respondent in the sum of Ksh. 258,660 with interest therein at 14% per annum in accordance with the Certificate of Taxation and issued herein on 15/1/2017.
 - b. Costs be provided.
2. The Respondent filed Grounds of Opposition dated 8/3/2018. The grounds of opposition were that the miscellaneous file upon which this application was filed, became spent once the bill of costs was taxed. There is therefore no legal basis of filing this application in the same file.
3. In the oral submissions, the Applicant stated that similar Grounds of Opposition had been filed in related files i.e. Misc. Application No 226 of 2014 as consolidated with Misc. Appn. No. 238 of 2014,



but they were dismissed. The Applicant prayed that the Grounds of Opposition be dismissed too. The Respondent in its submissions relied entirely on the filed Grounds of Opposition.

Analysis and Determination

4. I have considered the application, the supporting affidavit and the annexures thereto;
 - a. Whether this miscellaneous cause became spent after taxation
 - b. Whether the application is meritorious;
 - c. What is the order as to costs?
5. On the first issue, it is undisputed that taxation was done in this miscellaneous file. However, no reference was filed against the Certificate of Costs. What is required of the court is to enter judgment, the Certificate of Costs having not been set aside. I find that the Applicant rightfully sought for entry of judgment in this file.
6. 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.
7. The Bill of Costs against the Respondent was taxed at a sum of Ksh. 258,660 and a Certificate of Taxation issued on 15/1/2017. 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’.
8. 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.’
9. 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. 15/1/2017.
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. In this case, interest accrues from 15/1/2017 to 15/1/2023, 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 15/1/2017 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. 258,660.
 - b. Interest on (a) above do accrue at the rate of 14% per annum, with effect from 15/1/2017 to 15/1/2023, a period of 6 years.
 - c. Costs awarded to the applicant.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 14TH 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

