



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MURANG'A**

**MISCELLANEOUS CIVIL APPLICATION NO.6 OF 2021**

**DELMONTE KENYA LIMITED.....APPLICANT**

**VERSUS**

**MESHAK KIBE MUIRURI.....1<sup>ST</sup> RESPONDENT**

**PATRICK KIBE KIGURU.....2<sup>ND</sup> RESPONDENT**

**KEVIN KAMAU WANJIRU.....3<sup>RD</sup> RESPONDENT**

**JOSEPH NJOROGE.....4<sup>TH</sup> RESPONDENT**

**RULING**

By a **Notice of Motion Application** dated **9<sup>th</sup> of July 2021**, brought under Section 51(2) of the Advocates Act, Cap 16 Laws of Kenya, the Applicant sought for orders that;

- 1. That this Honourable Court be pleased to adopt the Certificate of Costs issued herein on 25<sup>th</sup> June 2021, in relation to the Party and Party Bill of Costs dated 28<sup>th</sup> January 2021, in the sum of Kshs. 284,710/= (Kenya Shillings Two Hundred and Eighty Four Thousand Seven Hundred and ten only), as the Judgment and Decree of this Honorable Court.**
- 2. That the Applicant be awarded interest on the taxed costs at court rates from 24<sup>th</sup> June 2021, until full payment.**
- 3. That the cost of this Application and the taxation process herein be borne by the 1<sup>st</sup> – 4<sup>th</sup> Respondents.**

The Application is premised on the grounds set out on the face of the Application and on the Supporting Affidavit of **Harry Odondi**, Advocate and Legal Officer of the Applicant, who averred; that the Applicant instructed the Law Firm of Messrs **Njoroge Regeru and Company Advocates** to represent it in **Murang'a ELC Appeal No. 25 of 2019**, and the Law firm did in fact represent the Applicant in the said Appeal. That pursuant to the said instructions the said Appeal was allowed and costs awarded to the Applicant at the conclusion of the Appeal. That the Advocates on record proceeded to draw and file a Party and Party Bill of Costs dated **28<sup>th</sup> January 2021**, and the said costs were taxed in the sum of Kshs. 284,710/= That the said Certificate of Costs has not been altered or set aside by the Court and no reference is pending therefrom. Further that the Applicant is informed by their Advocate that unless the Certificate of costs herein is adopted as a judgment of the court, the Applicant would not be able to enforce the payment of costs. That the Applicant is entitled to claim interest on costs and disbursements computed in the Bill of Costs at the rate of 14% per annum from **24<sup>th</sup> June 2021**, till payment in full as contemplated in Rule 7 of the Advocated Remuneration Order.

The Application is opposed through Grounds of Opposition dated the **20<sup>th</sup> September 2021**, and filed in court on the same day. The said grounds of opposition aver that; the application dated 9/8/21 is entirely unnecessary and only meant to enhance costs of the Appellant. That the process of securing a Decree/Order of the costs is merely an administrative one that does not require any appearance in court.

The Court directed that the instant Application be canvassed by way of written submissions. The Applicant filed its written submissions dated **12<sup>th</sup> October 2021**, through the **Law Firm of Njoroge Regeru & Co. Advocates**. Consequently, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed their written submissions dated **13<sup>th</sup> October 2021**, through the **Law Firm of Ishmael & Co. Advocates**.

The Court has considered the pleadings in general, the rival written submissions, the cited authorities and the relevant provisions of Law and finds that the main issues for determination are; -

I. *Whether the Court has the mandate to adopt the Certificate of Costs issued on 25/6/2021.*

II. *Whether Interest is payable on the taxed costs.*

**Whether the Court has the mandate to adopt the Certificate of Costs issued on 25/6/2021.**

The applicant's present application is predicated under **Section 51** of the **Advocates Act, Cap 16** Laws of Kenya. Section 51(2) of the Advocates Act provides as follows: -

**51 (2) The certificate of the taxing officer by whom any bills has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount 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”.**

Having regard to the above provision of Law, it is clear that the only instances where a Court **may not** enter judgment on a certificate of costs is where the certificate has been set aside, varied and/or altered or the retainer is disputed. See **Republic -vs- City Council of Nairobi Ivyland Park Ltd (interested party) Exparte Inderpal Singh & 2 others (2021) eKLR** where P. Nyamweya J (as she then was) stated:-

**“It is an established position of law that the only reason a court of law cannot enter judgment on a certificate of costs is if the same has been set aside or altered, or where there is an issue of retainer.”**

That means, therefore, that only the High Court has jurisdiction to set aside or alter the Certificate or enter judgment for the amount ascertained by the Taxing Officer and contained in the Certificate of Costs. The Taxing Officer's mandate ends after taxation and signing of the Certificate of Costs.

In the instant application, the Respondents have not disputed the costs between them and the Applicant, which were taxed on **24<sup>th</sup> June 2021**, at Kshs.284, 710/= and a Certificate of costs was issued. This Court has not been informed of any pending Reference and/or any objection to the taxation under Rule 11 of the **Advocates Remuneration Order** and in those circumstances, the Court sees no bar to entry of judgment in terms of the certificate of costs.

The above view is supported by the Civil Procedure Rules which provide for the powers of Deputy Registrars to hear some applications. Order 49 Rule 2 provides the circumstances under which a Deputy Registrar may enter judgment in a certain matter. It states:

**“Judgment may, on application in writing, be entered by the registrar or, in a subordinate court, by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand, in the following cases:**

**(a) under Order 10: (consequence of non-appearance, default of defence and failure to serve);**

**(b) in all other cases in which the parties consent to judgment being entered in agreed terms; or**

**(c) under Order 25, Rule 3 (costs, where suit withdrawn or discontinued).**

Rule 7(1) thereof provides the sort of applications that the **Deputy Registrar** may hear, stating:

**(1) The Registrar may—**

**(a) give directions under Order 42 rule 12 and Order 51 rule 8;**

**(b) hear and determine an application made under the following Orders and rules —**

**(i) Order 1, rules 2, 8, 10, 17 and 22;**

**(ii) Order 2, rules 1 and 10;**

**(iii) Order 3, 5 and 9;**

**(iv) Order 6;**

**(v) Order 7, rules 16 and 17 (2);**

**(vi) Order 8;**

**(vii) Order 10, rules 1 and 8;**

**(viii) Order 20;**

(ix) Order 21, rule 12;

(x) Order 22 other than under rules 28, and 75;

(xi) Order 23, 24, 25, 26, 27, 28, 30,31 and 33; and

(xii) Order 42, rule 14.

The applications listed above are routine; and are mainly administrative in nature and are not substantive and in effect, therefore, the Deputy Registrars have jurisdiction to hear them and give directions as the case may be. The rules do not give the Deputy Registrars power or jurisdiction to hear any other applications including those brought under section 51(2) of the Advocates Act.

From the above provision of the law, it is clear that the Deputy Registrar does not have jurisdiction to hear an application brought under Section 51(2) of the **Advocates Act**, and judgment in such an application can only be entered by a judge.

Having stated the above, the Court holds and finds that an application brought under **Section 51(2)** of the **Advocate's Act** is not merely administrative as submitted by the Respondents, but the same is a substantive application which falls under the jurisdiction of the Court. Consequently, the Court finds and holds that application dated **9<sup>th</sup> July 2021**, is merited in terms of prayer 1 and proceeds to grant the same.

**Whether Interest is payable on the taxed costs.**

Rule 7 of the **Advocates Remuneration Order** provides when interest may be paid on costs as follows: -

***“7. An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise 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.”***

This rule deals with interest chargeable by an Advocate in respect of its claim for disbursements and costs following submission of a Fee Note. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the Bill or Fee Note

In the case of **Otieno Ragot And Co. Advocates Vs Kenindia Assurance Co. Limited, Misc. Cause No. 78 of 2015**, the **Hon. Lady Justice E. N. Maina**, dealt with the question about whether interest was calculable from the date when the Judge delivers a Ruling on application under **Section 51 (2)** of the **Advocates Act**, or if it is calculable from the date when the Bill of Costs was filed in court. The learned Judge first addressed her mind to the issue as to the meaning of the word “*Bill*” stating to wit as follow;

***“Each case is to be decided on its own, and I must reiterate that my interpretation of the “bill” referred to in paragraph 7 of the Advocates (Remuneration) Order is one that the Advocate intends that the client should settle, but not the bill of costs served on the client for purposes of taxation.”***

The court has discretion to determine when interest becomes calculable. In the case of **D. Njogu & Company Advocates Vs Kenya National Capital Corporation NRB High Court Misc. No. 21 of 2005** the Court stated as follows;

***“In my considered view, it would be wrong to calculate interest from the date when the bill was sent to the client, regardless of the fact that such a bill was then watered down through taxation. If clients had to pay interest regardless of subsequent reductions on their bill, advocates would not have the incentive to charge the correct fee notes on the first occasion. It is for that reason that I hold that the date from when interest should be calculable should be pegged to the date when the advocate sends the correct fee note. And by the ‘correct fee note’ I mean***

***the bill which is in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client does not dispute, or the bill which is in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.”***

**It is clear from the above, that Rule 7** stipulates that interest is chargeable at 14% per annum, from the expiration of one month from the delivery of the Bill to the client. It therefore follows that there is a reference point, from when interest is calculable. It cannot accrue before one month has expired, from the time when the Bill is delivered to the client.

On the other hand, interest does not have to be charged, nor does it become automatically chargeable after the lapse of the one month from the date when the Bill was served. Pursuant to **Rule 7**, interest is chargeable provided that such claim for interest was raised before the amount of the Bill is tendered in full.

In **Jackson Omwenga & Co. Advocates Vs Everest Enterprises Ltd, Nbi Misc. Application No. 96 of 1996**, the Court pronounced thus;

***“I have perused the Advocates Remuneration (Amendment) Order, Rule 7. Under the said rule, an advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.***

*To comply with that provision, the applicant must prove two things:*

*(a) That one month has expired from the time he delivered his bill to the client;*

*(b) He has raised his 'claim' for interest before the amount of the bill has been paid or tendered in full."*

In the instant application, the Applicant has not provide proof that he had raised the issue of interest in the Bill of costs dated **28<sup>th</sup> January 2021**. The Applicant has also not produced evidence to the effect that the Certificate of Costs dated **28<sup>th</sup> June 2021** was served upon the Respondents.

However, the Court notes that the said **Certificate of Costs** has not been set aside, varied and/or no Reference has been filed by the Respondents in respect of the same. Therefore, the Court finds and holds that the Applicant is eligible to interest at Court rates (14% p. a) from the date when the Certificate of Costs was issued,

The upshot of foregoing is that **Notice of Motion** Application dated **9<sup>th</sup> July 2021**, and filed on **15<sup>th</sup> July 2021** succeeds and is allowed in the following terms:

**a) Judgment is hereby entered for the Applicant against the Respondents for Kshs. 284,710/= (Kenya Shillings Two Hundred and Eighty Four Thousand Seven Hundred and Ten).**

**b) Interest shall be paid at 14% p.a from 26<sup>th</sup> June 2021, till payment in full.**

**c) The Advocate will also have the costs of this application.**

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 18TH DAY OF NOVEMBER, 2021.**

**L. GACHERU**

**JUDGE**

**In the presence of;**

**Kuiyaki & Alex.....Court Assistants**

**Mr Wesonga H/B Thuo.....for the Applicant**

**N/A.....for the Respondents**

**L. GACHERU**

**JUDGE**