



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL APPLICATION NO. 168 OF 2020

AMONDI & CO. ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF KISUMU.....CLIENT/RESPONDENT

RULING

The application dated 31st May 2021 was brought pursuant to the provisions of **Section 51** of the **Advocates Act**.

1. The Advocate/Client Bill of Costs was taxed in the sum of Kshs 248,099/99. The Ruling on taxation is dated 22nd December 2020.
2. This Court has been asked to grant Judgment in favour of the Applicant, for the sum awarded by the learned Taxing Officer.
3. Pursuant to the provisions of **Section 51 (2)** of the **Advocates Act**, the Court is enjoined to enter judgment for the taxed costs, provided that no reference had been lodged to challenge the Certificate of Costs, which embodies the taxed costs.
4. As the Certificate of Costs herein is deemed final, as to the amount of the costs it covers, I find that the Applicant is entitled to Judgment for the sum of Kshs 248,099/99.
5. The only issue for determination by the Court is whether or not the Applicant was entitled to interest; and if so, at what rate and from what date.
6. Although the Applicant stated, in his submissions, that the taxed costs should attract interest at 14% per annum from the “*date of instructions*”, I find that there is no legal basis for that contention.
7. In the Judicial Review case, **THE CITY COUNCIL OF NAIROBI Vs IVYLAND PARK LIMITED JUDICIAL REVIEW CASE NO. 69 OF 2012**, (which was cited by the Applicant) P. Nyamweya J. (as she then was) granted judgment for the taxed costs;

“.... with interest at 14% per annum from the date of this ruling until payment in full.”

8. The said decision does not support the Applicant’s claim on interest.
9. The Applicant also placed reliance on the case of **MAKHECHA & COMPANY ADVOCATES Vs CENTRAL BANK OF KENYA, MISC. APPLICATION NO. 296 OF 2021**. In that case, Majanja J. expressed himself thus;

“The purpose of an award of interest is to compensate the claimant for being denied its money. (See Lata Vs Mbiyu [1965] E.A. 592). In this case, the applicant had been kept out of its money since the bill of costs was filed.

The applicant is therefore entitled to interest at court rates from 15th May 2012.”

10. In that case, the Bill of Costs dated 15th May 2021 was for the sum of Kshs 25,299,686/=.
11. As the learned Judge noted at paragraph 4 of his ruling;

“when the application came up for hearing on 6th February 2020, the parties agreed that the Bank pay the principal amount of Kshs 25,299,686.90, and the matter of interest be reserved for determination by the Court.”

12. In effect, the principal amount claimed in the Bill of Costs was not reduced upon taxation.

13. I therefore note that the Client had no reason for withholding the payment of the said principal amount.

14. In the circumstances, I do appreciate the reason why the learned Judge held that interest was payable from the date when the Applicant was kept away from its money.

15. In stark contrast to that case, the Bill of Costs in this case claimed the sum of Kshs 1,633,050/=. The learned Taxing Officer disallowed a huge chunk of that claim, and only awarded Kshs 248,099/99.

16. Accordingly, I find that the Respondent was perfectly entitled to have refused to pay the amount claimed in the Bill of Costs. The Applicant cannot thus claim that he was kept away from his money from the date when he filed his Bill of Costs.

17. In line with **Rule 7** of the **Advocates Remuneration Order**, I would have considered awarding interest at 14% per annum from a date which was 30 days after the Taxing Officer had delivered her ruling.

18. In my understanding, **Rule 7** was couched in such manner as to allow the Respondent a grace period of 30 days, from the date when the Applicant served his Bill of costs upon him. If the Respondent did not pay the costs within the period allowed, he could be penalized with an order for payment of interest.

19. In similar vein, when the Taxing Officer delivers his ruling on taxation, it would only be fair to allow the Respondent 30 days to settle the taxed costs.

20. But in this case, the Applicant specifically asked the Court to award interest *“at 14% per annum from the date of Judgement.”*

21. The other prayer in the Notice of Motion dated 31st May 2021 was as follows;

“2. THAT interest accrued on the Costs and disbursements due to the applicant be awarded from the date of filing the bill for taxation on 11TH AUGUST 2020 till payment of the same in full by the respondent.”

22. I have already held that because the amount claimed in the Bill of Costs was so very high compared to the costs finally awarded, it would be wrong to award interest from the date when the Bill of Costs was filed in Court.

23. On the face of the application before me, the Applicant set out the grounds upon which the said application was based. I note that the Applicant said;

“5. THAT the Applicant is entitled to interest on the amount of its costs and disbursements in the Certificate of Costs from the date of the Judgement till payments in full, in accordance with the Provisions of Rule 7 of the Advocates Remuneration Order.”

24. Both from the substantive prayer in the application, and also on the ground cited above, the claim is for interest to accrue from the date of judgment.

25. I hold the view that submissions which are not in tandem with the relief expressly sought in the application, cannot advance the Applicant's claim.

26. And it is well settled that parties are bound by their pleadings.

27. Therefore, a party cannot expect the Court to deviate from his claim, and proceed to grant a relief which was not sought in the application.

28. In the result, I award interest at 14% per annum from the date of this Judgment; in accordance with the relief sought by the Applicant.

29. Accordingly, Judgment is now entered in favour of the Applicant for the sum of Kshs 248,099.99, with interest thereon at 14% per annum, from the date of this Judgment.

30. Costs of the application dated 31st May 2021 are awarded to the Applicant.

DATED, SIGNED and DELIVERED at KISUMU This 9th day of February 2022

FRED A. OCHIENG

JUDGE