



**Edward Gacau Kariuki t/a Gacau Kariuki & Co. Advocates v Mwangi (Miscellaneous Application E573 of 2021) [2022] KEHC 82 (KLR) (Commercial and Tax) (4 February 2022) (Ruling)**

Neutral citation: [2022] KEHC 82 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E573 OF 2021**

**A MSHILA, J**

**FEBRUARY 4, 2022**

**BETWEEN**

**EDWARD GACAU KARIUKI T/A GACAU KARIUKI & CO.  
ADVOCATES ..... APPLICANT**

**AND**

**DANIEL MAINA MWANGI ..... RESPONDENT**

**RULING**

**1. INTRODUCTION**

The Notice of Motion Application dated 9<sup>th</sup> November 2021 is brought under Rule 7 of the Advocates (Remuneration) Order, Section 51(2) of the *Advocates Act*, Section 1A, 1B, 3 and 3A of the *Civil Procedure Act*; the Applicant seeks the following orders;

- a. The Certificate of Taxation dated 1<sup>st</sup> October 2021 in respect to the Taxation Order made on 30<sup>th</sup> September, 2021 for the sum of Kshs.145, 450/- be adopted as judgment and decree of the Court.
  - b. The Applicant be awarded interest accrued on the costs at 14% p.a from 11<sup>th</sup> September 2021.
2. The Application is premised on the grounds on the face of the application and on the Supporting Affidavit made on the same date by Edward Gacau Kariuki, Advocate who deponed that the Respondent was served with the Advocate-Client Bill of Costs and Notice of Taxation on 11<sup>th</sup> August 2021 but failed and/or ignored to file any response and/or object thereto.



3. The Advocate-Client Bill of Costs was taxed at Kshs.145, 450/- and a Certificate of Taxation issued. The said Certificate of Taxation has not been stayed, set aside and/or appealed against.
4. Further, the Respondent has refused and/or ignored to settle the taxed amount.
5. The Applicant thereby seeks judgment and decree on the Certificate of Taxation pursuant to Section 51(2) of the *Advocates Act* to enable the Applicant proceed with execution process against the Respondent for the taxed amount.
6. The Applicant further seeks interest on the taxed amount pursuant to Rule 7 of the Advocates (Remuneration) Order.
7. As the application and the retainer were uncontested and no appeal had been filed or the Certificate of Costs set aside the Applicant prayed that judgment be entered as prayed.

#### **ISSUES FOR DETERMINATION**

8. After reading the supporting affidavit filed herein this court finds the issues for determination are;
  - a. Whether judgment and decree should be entered on the Certificate of Taxation dated 1<sup>st</sup> October 2021?
  - b. Whether the Applicant be awarded interest accrued on the costs at 14% p.a from 11<sup>th</sup> September 2021?

#### **ANALYSIS**

Whether judgment and decree should be entered on the Certificate of Taxation dated 1<sup>st</sup> October 2021?

9. The facts of this matter are straight forward. The Applicant herein represented the Respondent as a purchaser in the purchase of all that parcel of land being Title No. Mavoko Town Block 12/2048 at a purchase price of Kshs.2, 800, 000. The Respondent failed to pay the Applicant the requisite legal fees and this prompted the Applicant to file an Advocate-Client Bill of Costs.
10. The Respondent was served with the Advocate-Client Bill of costs and Notice of Taxation but failed to file any response or objection thereto.
11. Further to the above, the Applicant filed an Affidavit of Service by Patrick M. Njue dated 18<sup>th</sup> November 2021 confirming that the Respondent herein was served with the present Applicant and has failed and/or ignored to file a response thereto. The Application is thus unopposed.
12. The Certificate of Taxation has not been set aside, altered or challenged thus the issue of the advocates cost is conclusive.
13. Section 51 of the *Advocates Act* provides:
  - (2) 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.”



14. In the case of *Musyoka & Wambua Advocates Vs Rustam Hira Advocate* (2006) eKLR it was held: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....”

15. All the conditions as set out in Section 51(2) of the Act have been satisfied; and this court is satisfied that this a suitable case for it to exercise its discretion in favour of the Applicant and therefore proceeds to enter judgment against the Respondent for the sum of Kshs.145, 450/-.

**Whether the Applicant be awarded interest accrued on the costs at 14% p.a from 11<sup>th</sup> September 2021?**

16. The issue of awarding interest on the taxed amount at 14% p.a is provided under the provisions of Rule 7 of the Advocates Remuneration Order which provides: -

“An Advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”

17. Although the application is uncontested the Applicant has not tendered any evidence that it raised and or notified its client on the issue of interest when it tendered its bill. In the absence of any notification, the Applicant is therefore found to have failed to satisfy the conditions as set out hereinabove.

18. The claim for interest thereon at the rate of 14% from 11<sup>th</sup> September 2021 is hereby disallowed.

**FINDINGS AND DETERMINATION**

19. In the light of the foregoing this court makes the following findings and determinations;

- i. The application is found to be partially meritorious;
- ii. The Taxation Order for the sum of Kshs. 145, 450/= be and is hereby adopted as a judgment of the court;
- iii. The claim for interest at the rate of 14% from 11<sup>th</sup> September 2021 is hereby disallowed.
- iv. There shall be no order as to costs.

**Orders Accordingly.**

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**HON. A. MSHILA**

**JUDGE**

In the presence of;

Mr. Gacau for the Applicant

No appearance for the Respondent



Lucy-----Court Assistant

