



**Edward Gacau Kariuki t/a Gacau Kariuki & Co. Advocates v Mwangi (Miscellaneous Application E575 of 2021) [2022] KEHC 81 (KLR) (Commercial and Tax) (4 February 2022) (Ruling)**

Neutral citation: [2022] KEHC 81 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E575 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. 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 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.

### **ISSUES FOR DETERMINATION**

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

### **ANALYSIS**

#### **Whether the Certificate of Taxation dated 1<sup>st</sup> October 2021 should be adopted as a judgment and decree of the court?**

8. 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 12/7925 at a purchase price of Kshs.5, 000, 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.
9. The Respondent was served with the Advocate-Client Bill of costs and Notice of Taxation but failed to file any response or objection thereto.
10. 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.
11. The Certificate of Taxation has not been set aside, altered or challenged thus the issue of the advocates cost is conclusive.
12. 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.”

13. 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.....”

14. This court reiterates that the fact that the Certificate of Taxation has not been set aside, altered or challenged and finds that the conditions as set out in Section 51(2) have been satisfied. This court is



satisfied that this is a suitable case for it to exercise its discretion in favour of the applicant and proceeds to enter judgment against the respondent for the sum of Kshs.415,450/-;

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

15. 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”

16. The same position as reiterated in *Kerongo & Company Advocates versus Africa Assurance Merchang Co. Limited* [2019] eKLR where the Court held that;

“ An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the Advocates Remuneration order. As the Advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum.”

17. The Applicant has not furnished the court with proof that it raised the claim for interest with the Respondent when it tendered its Bill of Costs. The pre-conditions for the claim for interest at 14% p.a from 11<sup>th</sup> September 2021 are found not to have been satisfied and therefore the claim is hereby disallowed.

**FINDINGS AND DETERMINATION**

18. In light of the above this court makes the following findings and determinations;

- (i) The Application is found to be partially meritorious.
- (ii) The Taxation Order made on 30<sup>th</sup> September, 2021 for the sum of Kshs.145, 450 be and is hereby adopted as a judgment and decree of the Court.
- (iii) The claim for interest at 14% p.a 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 AT NAIROBI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**HON. A. MSHILA**

**JUDGE**

**In the presence of;**

Mr. Kariuki G.E. for the Applicant

No appearance for the Respondent

Lucy-----Court Assistant

