



Kiruki & Kayika Co Advocates v Monarch Insurance Co Ltd (Miscellaneous Application E095 of 2023) [2024] KEHC 14315 (KLR) (15 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E095 OF 2023
A MSHILA, J
NOVEMBER 15, 2024**

BETWEEN

KIRUKI & KAYIKA CO ADVOCATES APPLICANT

AND

THE MONARCH INSURANCE CO. LTD RESPONDENT

JUDGMENT

1. Before court is the Notice of Motion dated 11th July, 2024 and brought under Section 51(2) of the Advocates Act (CAP 16); The Applicant seeks the following orders:-
 - a. That the Kiambu Misc. Application Nos. E198 of 2022, E199 of 2022, E206 of 2022, E207 of 2022, E085 of 2023, E095 of 2023 and E106 of 2023 be consolidated.
 - b. Judgment be entered in favor of the Applicant herein, against the Respondent in the sum of Kshs. 879,735/74 being the certified costs due to the Applicant as against the Respondent in Kiambu Misc. Application Nos. E198 of 2022, E199 of 2022, E206 of 2022, E207 of 2022, E085 of 2023, E095 of 2023 and E106 of 2023 respectively.
 - c. That the Respondent do pay the Applicant interest on the taxed sum from the date of this Application until payment in full.
2. The application is premised on the grounds on the face of the application and the Supporting Affidavit of KIRUKI MUTWIRI dated 11/07/2024 made in support of the application; therein she states that the Respondent instructed the firm of KIRUKI & KAYIKA ADVOCATES to act for its client in THIKA CMCC No. 147 of 2020, KIAMBU CMCC No.234 OF 2020, KIKUYU SPMCC No. 205 OF 2020, KIAMBU CMCC No. 12 of 2021, KIKUYU CMCC No.352 of 2021, KIAMBU CMCC 327 of 2022 and GATUNDU 285 of 2019.



3. The Respondent refused, failed and or neglected to pay the legal fees thereby necessitating the filing of the Bill of Costs which was taxed and a Certificate of Taxation was issued which taxed costs the Respondent has failed and/or neglected to settle.
4. The Respondent failed and or neglected to pay legal fees thereby necessitating the filing of a Bill of Costs herein for taxation and the same was taxed on 13/06/2024 as follows;
 - i. Kiambu Hccc Misc No. E198 Of 2022 Kshs.163,570/74
 - ii. Kiambu Hccc Misc No. E199 Of 2022 Kshs.175,000/00
 - iii. Kiambu Hccc Misc No. E206 Of 2022 Kshs.90,491/00
 - iv. Kiambu Hccc Misc No. E207 Of 2022 Kshs.122,401/00
 - v. Kiambu Hccc Misc No. E085 Of 2023 Kshs.142,478/00
 - vi. Kiambu Hccc Misc No. E095 Of 2023 Kshs.132,470/00
 - vii. Kiambu Hccc Misc No. E106 Of 2023 Kshs.53,300/00

Total Kshs.879,735/74

The Respondent has refused, failed and/or neglected to settle the taxed costs; the Certificate of taxation has not been appealed against, set aside or altered by the Respondent; Applicant prayed that judgment be entered as prayed for the sum of Kshs. 879,735/74 together with interest thereon.

Issues For Determination

5. Having considered the application and the supporting affidavit the issues framed for determination are;
 - i. Whether to consolidate the applications.
 - ii. Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs. 879,735/74 and;
 - iii. Whether interest is applicable thereon.

Analysis

Whether to consolidate the applications.

6. The main purpose of consolidation is to combine or unite two or more suits so as to save costs, time and effort and to make the conduct of the several actions more convenient by treating them as one action. In this instance there are seven (7) claims made whereby the parties are the same and the same common question of law or fact arises in all of the suits; The rights or relief claimed in them are in respect of arise out of a series of transactions between the same parties. Reference is made to the case of “Municipal Council of Mombasa v Municipal Council of Mombasa [2004] eKLR.-
7. From the evidence presented and the surrounding facts in all the suits it is graphically clear that the same is as between the same parties namely an Advocate and Client and the same common question of law or fact arises in all of the suits related to unpaid taxed fees;
8. This court is thus satisfied that consolidation would save on the court’s time and resources which are limited.



Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs. 879,735/74 and;

9. Section 51(2) of the *Advocates Act* provides:-

“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 recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs.”

10. The wordings of the above section empower the court to enter judgment on the taxed amount if the same is uncontested.

11. In determining whether the court should adopt the amount on the Certificate of Taxation as the judgment of the court it should be satisfied that the certificate of taxation has not been set aside.

12. Reference is made to the case of Lubulellah & Associates Advocates Vs N. K. Brothers Limited (2014) eKLR where the court observed that:-

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of Costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”

13. From perusal of the court record this court is satisfied that the Rulings are uncontested as the Respondent has not moved any court by way of filing any References against the Rulings nor have the Rulings been set aside, altered, varied and / or reviewed, nor have any appeals been filed.

14. Therefore, no other action is required from this court save to enter judgment as prayed against the Respondent.

Whether interest is applicable thereon and payable

15. The Applicant seeks prayers for this court to grant interest thereon at 14% per annum until payment in full.

16. Rule 7 of the Advocates Remuneration Order provides that:

“An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”

17. The above rule stipulates that such claim for interest must be raised for it to start to accrue after the expiration of one month from the delivery of the bill to the client. The Applicant did not make any averments in its affidavit or tender any documents to demonstrate when the Bill or demand for settlement of the taxed costs was delivered to the Respondent; nor did the Applicant provide any proof of when and whether they had raised the issue of interest with the Respondent.



18. In the case of Kerongo & Company Advocates Vs Africa Assurance Merchant Co. Limited [2019] eKLR the court held;

‘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.’

19. After careful perusal of the record nowhere is there a claim for interest raised with the Respondent. Therefore, in line with Rule 7, the Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent; the prayer for interest to start accruing on the costs is found to be devoid of merit and is therefore disallowed.

Findings & Determination

20. For the forgoing reasons this court makes the following findings and determinations:-

- i. This court finds the application consolidation to be meritorious and it is hereby allowed;
- ii. The Certificates of Taxation in Kiambu Misc. Application Nos. E198 of 2022, E199 of 2022, E206 of 2022, E207 of 2022, E085 of 2023, E095 of 2023 and E106 of 2023 be and hereby consolidated.
- iii. The Certificates of Taxation in the sum total sum of Kshs. 879,735/74 are hereby adopted as Judgments of this court. Judgment be and is hereby entered in favour of the Applicant/ Advocates in the sum of Kshs. 879,735/74.
- iv. The prayer for interest is found to be devoid of merit and it is hereby disallowed.
- v. Each party to bear own their costs of this application.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 15TH DAY OF NOVEMBER, 2024.

HON. A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

N/A – for the Applicant

N/A – for the Respondent

Delivered in the parties absence

