



Kinyua & Maingi & Co Advocates v Trident Insurance Co Limited (Miscellaneous Application E331 of 2023) [2024] KEHC 13755 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13755 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E331 OF 2023
PN GICHOHI, J
NOVEMBER 6, 2024**

BETWEEN

KINYUA & MAINGI & CO ADVOCATES APPLICANT

AND

TRIDENT INSURANCE CO LIMITED RESPONDENT

RULING

1. The Applicant herein has moved this Court by a Notice of Motion application dated 10th April 2024 and brought under Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya seeking orders that:-
 1. Judgment be entered in favour of the Applicant against the Respondent the sum of Kshs. 176,790/= being the certified costs due to the Applicant as against the Respondent .
 2. The Respondent does pay to the Applicant the costs of the application together with interest on the taxed sum.
2. The grounds on the face of the application and supported by the Affidavit sworn by Njoki Kinyua Advocate on 10th April, 2024 are that the Respondent instructed the firm of Kinyua & Maingi & Co. Advocates to act for the Defendant in Nakuru CMCC No. E357 of 2021 Bernard Suge & Joyce Chereono (suing as legal administrators of the Estate of Fredrick Kiplagat) vs Ng'eno Kimtai & another but the Respondent failed to pay the legal fees. This necessitated the Applicant to file the Bill of Costs which was eventually taxed at Kshs. 176,790/= and a Certificate of Taxation issued to that effect.
3. However, and despite being served with the copy of the ruling and the Certificate of Taxation, the Respondent refused, failed and/or neglected to settle the taxed costs .
4. The Applicant further states that the Certificate of Taxation has not been appealed against , set aside or altered by the Respondent and therefore, it is only fair that the application be allowed as prayed.



Determination

5. From the material presented before this Court, it is evident that indeed that Applicant herein acted for the 2nd Defendant (David Rono) in the suit stated herein.
6. The Respondent was duly served with the Bill of Costs dated 5th September 2023 and also with the Taxation Notice dated 6th October 2023. There was no response from the Respondent and therefore, the Taxing Officer did tax the said Bill of Costs at Kshs. 176,790/= vide her ruling delivered on 25th January, 2024.
7. Section 51 (2) of the *Advocates Act* which provides that :-

“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.”
8. There has been no dispute as to the retainer. There has been no reference to the ruling on taxation. The Certificate of Taxation herein has not been set aside or altered by this Court and therefore, the same is considered final.
9. Further, though served with this Application, the Respondent did not file any response and therefore, the Application remains unopposed.
10. As regards interest, paragraph 7 of the Advocates (Remuneration) Order provides that:-

“An advocate may charge interest at 14 per cent 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, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”
11. In the circumstances, the application dated 10th April, 2024 is allowed as follows:-
 1. Judgment be and is hereby entered in favour of the Applicant as against the Respondent in the sum of Kshs. 176,790/=.
 2. The Applicant is awarded interest on the said sum at the rate of fourteen (14%) per cent per annum calculable after Thirty (30) days from the date the Respondent was served with the Bill of Costs until payment in full.
 3. Costs of the application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF NOVEMBER, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kinyua for the Applicant

N/A for the Respondent

Ruto, Court Assistant

