



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 667 OF 2017

WAIGANJO WACHIRA &

COMPANY ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

PACIS INSURANCE COMPANY LIMITED.....CLIENT/RESPONDENT

RULING

1. Waiganjo Wachira & Company Advocates, the advocate/applicant herein, took out the Notice of Motion dated 18th March, 2019 in which it sought for the following orders:

(i) THAT judgment be entered for the taxed advocate-client costs of Kshs.64,773/ contained in the certificate of taxation dated 8th March, 2019 with interest thereon at the rate of 14%p.a. with effect from 13th November, 2017 until payment in full.

(ii) THAT costs of the application herein be awarded to the advocate/applicant.

2. The Motion is supported by the grounds set out on its face and the facts stated in the affidavit of *James Ichaura Wachira*.

3. The client/respondent put in Grounds of Opposition dated 19th July, 2019 to oppose the application, raising the following grounds:

(a) THAT the Bill of Costs was taxed on 2nd August, 2018.

(b) THAT the certificate of costs dated 8th March, 2019 has never been served upon the respondent.

(c) THAT interest should apply with effect from the date of taxation (2nd August, 2018) or from the date of issuance of the certificate of costs (8th March, 2019).

4. This court gave directions to the parties to file written submissions. The applicant on its part submitted that the provisions of Section 51(2) of the Advocates Act are clear that once a certificate of taxation is issued and remains unaltered and/or set aside, the court is duty bound to enter judgment for the amount indicated in the certificate of taxation.

5. The applicant also maintained its entitlement to interest at the rate of 14% p.a. citing *inter alia*, the rendition in **Odera Obar & Co. Advocates v James Oudia [2019] eKLR** that going by the provisions of **Rule 7 of the Advocates (Remuneration) Order**, an advocate is entitled to interest on the certified amount at the aforementioned rate.

6. Further to the foregoing and in addressing the subject of when interest should accrue, the applicant referred this court to a similar application filed between the parties, that is **Waiganjo Wachira & Company Advocates v Pacis Insurance Company Limited [2019] eKLR** where the court determined that in the absence of any evidence as to when the Bill of Costs was served pursuant to **Rule 7 (supra)**, interest would accrue from the date of delivery of the ruling.

7. The applicant finally submitted that the advocate-client Bill of Costs was duly served upon the respondent on 24th November, 2017.

8. In reply, it was the respondent's admission that the Bill of Costs was served upon it on 24th November, 2017 but it contended that interest should be made to accrue from the said date of service and not from the date indicated in the application.

9. I have considered the grounds laid out on the face of the Motion, the facts deponed in the affidavit supporting the Motion, the Grounds of

Opposition and the rival submissions and authorities cited.

10. The record shows that the applicant filed the advocate-client Bill of Costs dated 10th November, 2017 on 13th November, 2017 and that the same was taxed by Deputy Registrar L. Mbacho on 2nd August, 2018 in the sum of Kshs.64,773/.

11. It is also apparent from the record that a certificate of taxation was subsequently issued on 8th March, 2019.

12. The provision of **Section 51(2)** of the **Advocates Act** is well settled that a certificate of taxation is final unless and until it is set aside or varied. The court in **Owino Okeyo & Company Advocates v Fuelex Kenya Limited [2005] eKLR** reaffirmed the above position when it held thus:

“In my understanding of the provisions of Section 51 (2) of the Advocates Act, it enables an advocate to get judgment for the taxed costs...provided that his client did not dispute the fact that the advocate had been instructed (or retained) in the first instance.”

13. A similar reasoning was adopted by the court in the case of **Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR** in the following manner:

“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.”

14. It is not in controversy that the respondent had retained or otherwise applied the legal services of the applicant. It is similarly not in dispute that the respondent was at all material times privy to the taxation proceedings irrespective of whether or not it was served with the certificate of taxation thereafter. In the premises, this court has no other business save to enter judgment in accordance with the amount indicated in the certificate of taxation.

15. On the subject of interest, it is apparent that the respondent does not dispute the applicant’s entitlement to the same; rather, the issue lies with the period from which such interest should accrue.

16. **Rule 7** of the **Advocates (Remuneration) Order** provides as follows:

“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. The aforementioned provision was reinforced in the authority of **Muri Mwaniki & Wamiti Advocates v John Ngigi Nganga & another [2014] eKLR** which the applicant cited in its submissions.

18. In the present instance, it remains undisputed that the advocate-client Bill of Costs was served upon the respondent on 24th November, 2017.

19. Going by the above provision, it therefore follows that interest would start to accrue on 24th December, 2017 being one (1) month from the date of service/delivery of the Bill of Costs.

20. In the end, the Motion is allowed and I make the following orders:

a) Judgment be and is hereby entered in favour of the applicant against the respondent in the sum of Kshs.64,773/ plus interest at court rates from 24th December, 2017 until payment in full.

b) The applicant shall also have costs of the application.

Dated, Signed and Delivered at Nairobi this 21st day of January, 2020.

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J.K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent