

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CIVIL MISCELLANEOUS APPLICATION NO 5 OF 2021

ODHIAMBO OWITI & COMPANY ADVOCATES.....
ADVOCATE

VERSUS

UAP INSURANCE
LTD.....CLIENT

RULING

INTRODUCTION

1. In its Notice of Motion dated 16th December 2021 and filed on 17th March 2022, the Advocate herein sought that this court pleased adopt the Certificate of Costs issued herein in relation to the Advocate/Client's Bill of Costs dated 27th January 2021 2019 (**sic**) in the sum of Kshs Kshs 151,746.70 (Kenya Shillings One Hundred and Fifty One Thousand Seven Hundred and Forty Six and Seventy Cents only) as the Judgment and decree of this court.
2. It also prayed that it be awarded interest on the taxed costs at fourteen (14%) per cent per annum from 27th September 2019 until full payment, being one month from the date of delivery of the Pro-forma invoice to the Client, as was contemplated in Rule 7 of the Amended Advocates Remuneration Rules.
3. Faustine Osewe, Advocate of the High Court of Kenya, practicing as an Associate in the firm of Owiti, Otieno & Ragot Advocates swore an affidavit on 16th September 2021 in support of the said application. Caren Chuchu, an Advocate of the High Court of Kenya,

practicing as such in the said firm also swore a Further Affidavit on 19th June 2023 in support of the said application.

4. It was the Advocate's case that the Client retained it to represent it in **Vihiga PMCC No 106 of 2015 Joan Cannis Mmbone vs Saulo Omondi Imbeo & 2 Others** and that they represented the Client in the said suit. It asserted that it served the Client with its *Pro-forma* invoice dated 24th August 2019 for payment of its professional fees thereon on 28th August 2023, but the Client failed to settle the amount in the said invoice.
6. It averred that as the Client failed to pay the aforesaid sum, it filed an Advocate-Client Bill of Costs dated 27th January 2021 which was taxed in the sum of Kshs 151,746.70 whereafter a Certificate of Costs was issued.
7. It pointed out that the Client once again failed to pay the said taxed costs yet the said Certificate of Costs had not been altered or set aside by the court and that there was no reference was pending therefrom. It contended that unless the said Certificates of Costs was adopted as Judgment of this court as prayed, it would not be able to enforce the payment of the said unpaid sum of Kshs 151,746.70.
8. James Mundia Okwemba, the Client's Advocate, swore a Replying Affidavit in opposition to the Advocate's application on 7th June 2024. The same was filed on 13th June 2024. The Client agreed that it indeed retained the legal services of the Advocate who represented it in **Vihiga PMCC No 106 of 2015 Joan Cannis**

Mmbone vs Saulo Omondi Imbeo & 2 Others and that on 24th November 2021, the Advocate-Client Bill of Costs dated 27th January 2021 was taxed in the sum of Kshs 151,746.70. It pointed out that it remitted into the Advocate's Account No 0001133042 Advocate's Account No 0001133042 with the total taxed amount of Kshs 438,691.70 vide payment reference ACCP022681 on 15th December 2021, which sum included the total taxed amount of Kshs 151,746.70 and taxed sums in **Vihiga HCMCA No 7 and 3 of 2021** which bills were taxed in the sum of Kshs 142,254.50 and 144,690.50 respectively.

9. It asserted that despite payment having been made as evidenced above, the Advocate proceeded to slate the matter for hearing of the instant application on 21st April 2022. It stated that the matter did not proceed as the files were missing in the Registry. It added that prior to the said hearing, its Advocate had reached out to the Advocate herein through email on 20th April 2022 informing them that the amount taxed had already been settled and sought to have the application marked as settled but the email did not elicit any response.
10. It was emphatic that the Advocate was yet to verify and/or confirm on its end that it was in receipt of the payment. It opposed the adoption of the Certificate of Costs issued as Judgment and decree of the court. It also opposed the Advocate being awarded interest on the taxed costs.

11. It was categorical that the Advocate's application herein was an afterthought, frivolous, misconceived, incompetent and an abuse of the court process which was intended to unnecessarily increase costs and, therefore, did not meet the threshold of the orders sought.
12. The Advocate did not file any Written Submissions. The Client's Written Submissions were dated and filed on 30th May 2025. The Ruling herein is, therefore based on parties' affidavit evidence and the Client's Written Submissions only.

LEGAL ANALYSIS

13. The Client invoked Rule 7 of the Advocates (Remuneration) Order and argued that a perusal of the Advocate's final *Pro-Forma* Request Note did not disclose a charge of interest of fourteen (14%) per cent per annum on its disbursements and costs. It asserted that the said omission negated the application of the said Rule 7 and that it rendered the bill liable to an exercise by the court of its discretion under Section 26 of the Civil Procedure Act as was held in the case of **Otieno, Ragot & Company Advocates vs Kenya Airport Authority [2021]eKLR.**
14. In that regard, it contended that there was, therefore, no basis for awarding the Advocate interest at fourteen (14%) per cent per annum from the date of 27th September 2019 until payment in

full. It placed reliance on the case of **Odhiambo Owiti & Co Advocates vs UAP Insurance Co Limited (Miscellaneous Civil Cause 13 of 2021)[2024] KEHC 2071 (KLR)** where it was held that as the respondent therein had paid the sums taxed, then the claim for interest by the Applicant under Rule 7 of the Advocates (Remuneration) Order had been overtaken by events.

15. It further urged the court to observe the principle that costs follow the event when exercising its discretion on the award of costs and to exercise its discretion judicially pursuant to Section 27(1) of the Civil Procedure Act Cap 21 (Laws of Kenya). It urged the court to dismiss the Advocate's application and award costs to it.

16. Notably, the issues that had been raised before this court for determination were whether or not the Certificate of Costs should be adopted as a Judgment of this court and whether or not the Advocate was entitled to the interest sought. This court had due regard to Section 51(2) of the Advocates Act Cap 16 (Laws of Kenya) which provides as follows:-

“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 (emphasis court) 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.”

17. Further, Rule 7 of the Advocates (Remuneration) Order stipulates 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.”

18. It was not in dispute that the Certificate of Costs that was issued by the Taxing Officer herein had not been set aside and/or altered. Further, the Client did not appear to have filed any Reference under Paragraph 11 of the Advocates Remuneration Order to challenge the decision of the said Taxing Master. In the circumstances, this court **could** (emphasis court) enter judgment on the said Certificate of Costs in line with Section 51(2) of the Advocates Act.

19. This court purposely used the word **“could”** because entry of judgment on the certificate of costs was one of the orders it could give. It was not the only order it could give in relation to the certificate of costs. The Certificate of Costs was issued on 24th November 2021. The Client settled the same on 17th December 2021. It was, therefore, not necessary for the Advocate to have filed its Notice of Motion dated 16th December 2021 on 17th March 2022.

20. Bearing in mind that the Advocate did not deny that it was paid all the costs before the court made its determination on the present application, this court found and held that entering judgment on the aforesaid Certificate of Costs was merely an academic exercise. In this

regard, the court was not obligated to enter judgment on the said Certificate of Costs as the present application had been overtaken by events.

21. Having found that the present application had already been overtaken by events, this court was not obligated to deal with the issue of interest. However, taking judicial notice that it could be found to have erred on its finding by the Court of Appeal, it found it prudent to address itself to the issue of interest on costs.

22. Several courts have held that the court has the discretion to determine when interest ought to run. This court associated itself with the authorities that were cited by parties in this regard. In the case of **Otieno Ragot & Company Advocates vs Kenya Ports Authority [2017]eKLR**, it was held that although Rule 7 entitled an advocate to claim interest, the time from when interest would run was not stipulated and was therefore left to the discretion of the court.

23. In the case of **D. Njogu & Company Advocates vs Kenya National Capital Corporation [2006] eKLR**, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that the **“correct fee note”** meant a bill that was in accordance with the terms upon which the advocate had contracted with the client or the bill which the client did not dispute or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.

24. This court took the view that Rule 7 of the Advocates Remuneration Rules was clear that interest was chargeable at fourteen (14%) per cent per annum from the expiration of one (1) month from the delivery of the bill to the client. There was, therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired from the time when the bill was delivered to the client.
25. However, interest did not become automatically chargeable after the lapse of the one (1) month from the date when the bill was served. Rule 7 of the Advocates Remuneration Rules provided that interest was only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.
26. This court was persuaded by the holdings in the cases the Client herein relied upon where it was held that a *pro-forma* invoice and/or a request note was not a bill in the meaning of Rule 7 of the Advocates Remuneration Order. Indeed, the *Pro Forma* invoice that the Advocates forwarded to the Client contained different figures from the Bill that was subsequently filed and taxed by the Taxing Officer.
27. This court considered the case of **Otieno Ragot & Co Advocates vs Kenindia Assurance Co Ltd [2020]eKLR** where the court held that a *pro forma* invoice did not qualify as a bill under Rule 7 of the Advocates Remuneration Order. Having said so, it was not clear to this court when the correct Bill was submitted to the Client for settlement before it was filed because the Advocate mainly focused on the said Final *Pro-forma* Request Note which was served on 28th August 2019.

The same indicated a different amount from the amount on the Bill that was taxed. The Advocates did not also file the Trial Court's Ruling which would have indicated whether the Taxing Officer noted when the Client was served.

28. If the said *Pro- forma* Invoice had been identical to the said bill and the warning of fourteen (14%) per cent per annum was contained in both documents, this court would have found the same to have been adequate notification of the amounts due and owing to the Advocates by the Client herein and deemed it to have provided sufficient information as contemplated in Rule 7 of the Advocates Remuneration Order.

29. It was trite that he who alleges must prove. This court noted that the Advocate- Client Bill of costs dated 27th January 2021 did not include the claim for interest of fourteen (14%) per cent per annum as from 27th September 2019. Its *Pro- forma* fee note was also silent on the same. As there was no proof as to when the interest would have started to run, it was difficult for this court to presume when the interest would have started to run. It was, therefore, its considered opinion that the Advocate's claim for interest could not have been sustained and had to fail.

DISPOSITION

30. For the foregoing reasons, the upshot of this court's decision was that the Advocate's Notice of Motion application dated 16th December

2021 and filed on 17th March 2022 was not merited and the same be and is hereby dismissed with costs to the Client herein.

31. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **18th** day of **December** 2025

J. KAMAU
JUDGE

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