



REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
THIKA**

MISC. APPLICATION NO. E068 OF 2022

**KIAMA WANGAI & CO. ADVOCATES.....
APPLICANT**

VERSUS

**HENRY MURAGA
NDUNGU.....RESPONDENT**

RULING

- 1) This Ruling is in respect of the Notice of Motion Application dated 24/04/2024 brought under Order 51 (2) of the Advocates Act, Order 7 Advocates Remuneration Order, Order L Rule 1 of the Civil Procedure Rules for the following orders:
 - a) THAT Judgment be entered for the Advocate/Applicant as against the Client/Respondent for the sum of Kesh One Hundred and Forty Nine Thousand, Sixty Five (Kesh 149,065.00) being certified costs due to the Applicant
 - b) THAT the Respondent do pay to the Applicant interest on the Certified costs at the rate of 14% per annum from 13th September 2023 until the payment in full

- c) THAT the Respondents do pay to the Applicant the costs of this Application.
- 2) WHICH Application is based on the grounds:-
- a) THAT the Advocate-Client costs due to the Advocate/Applicant herein were taxed at Kesh One Hundred and Forty Nine Thousand, Sixty Five (Kesh 149,065.00)
 - b) THAT the said Ruling delivered on Advocate-Client Bill of Costs dated 22/11/2022 has not been set aside, reviewed, appealed and/or varied
 - c) THAT it is only fair and just in the circumstances that Judgment be entered for the sum certified to be due to the Applicant herein
- 3) The Application is opposed vide two Replying Affidavits which is a very unusual act. One is dated 18/07/2024 where the Respondent admits owing the said amount except for interest and avers that he was not able to pay due to financial challenges. He however states that it is unfair for the Applicant to seek interest on the taxed amount since the Ruling of 13/09/2023 did not include interest. He also states that the Applicant should execute the decree against him and not seek interest.
- 4) In the undated Replying Affidavit sworn by the Respondent he annexed a copy of Mpesa statement and Bank statement showing payments made to Peter Kiama totaling Kesh 149,065.00 being settlement of the decreed amount.

- 5) On further perusal of the Court file I note that the Respondent has authored a letter dated 26/09/2024 stating that he has paid Professor Kiama Wangai Kesh 150,000 as was directed by the Court.
- 6) There is no any Supplementary Affidavit nor further affidavit filed in response to the undated Replying Affidavit nor the letter dated 26/09/2024.

Determination

- 7) I have considered the application in the light of the materials placed before the Court. The relevant law applicable is provided for under section 51(2) of the Advocates Act, which states that: -

“The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of 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) In that regard, I note that the Applicant has produced evidence of the certificate of taxation issued on 18/04/2024. I further note that the subject Certificate of Taxation has not been set aside nor varied. Further there is no dispute on retainer therefore, there is no justification to disallow the

application but only as far as the amount is still outstanding and remains unpaid.

9) However, the Respondent in his response has admitted owing but has also admitted having paid off the said taxed amounts totaling Kesh 149,065.00 and produced through annexure **HMN1** documents to support his claim that he made payment and has attached mpesa statements and bank statements including a letter to the Court. The Applicant has not denied or accepted Respondent's averments. Therefore the Court takes it that the silence here means that indeed the stated amounts have been paid as alleged

10) On the issue of interest, I have considered 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”

11) I agree with the reasoning in the case of **Waiganjo Wachira & Company Advocates vs. Pacis Insurance Company Limited [2019] eKLR** that sought to distinguish

the case of **Kithi & Co Advocates v Menengai Downs Ltd (2015) eKLR.**

12) In the mentioned case, it was observed that:-

“And the explanation given in Kithi and Company Advocates

Once judgement is entered on a certificate of costs the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For an advocate to be able to recover this there must be evidence on record of the date when the bill was served upon the client.

The Applicant has not demonstrated that the bill was served on the Respondent on the 16th of September 2018 and the issue of interest was raised during the taxation. The interest with regard to the certificate of costs will begin to run on after the entry of this Judgment. From the foregoing it is evident that upon entry of this Judgment, the decretal sum will attract 14% interest.”

13) I also add that there is no indication of a claim of interest charged that was made to the Respondent in terms of Rule 7 of the Advocates Remuneration Order and therefore I see no reason to award the Applicant interest of 14% from the date of filing the bill of costs. It was incumbent

upon the Applicant to present evidence to the effect that the erstwhile client had been served with the bill of costs so as to bolster his claim for interest at 14% per annum. In the absence of such evidence then the Applicant will have to contend with the above interest from the date of taxation which would be fair given the circumstances.

14) In view of the foregoing observations the application dated 24/04/2024 has merit however I note that since prayer 1 of the Notice of Motion application is overtaken by events following the payment of the taxed amounts by the Respondent, then the only prayer left to be granted is prayer 2 but even then it will only attract interest of 14% from the date of taxation to the date the Respondent already paid the taxed sums.

15) The Respondent will bear the cost of the Application.

It is so ordered

DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 6TH DAY OF MARCH 2025

.....
MOGENI J
JUDGE

In the presence of:

Dr. Wangai for the Advocate/Applicant

Mr. Ndungu in person

Melita - Court Assistant

.....

MOGENI J
JUDGE

ORIGINAL