



Lubulellah & Associates v Gilbi Construction Company Ltd (Environment & Land Miscellaneous Case E150 of 2023) [2024] KEELC 4742 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E150 OF 2023**

**JO MBOYA, J
JUNE 13, 2024**

BETWEEN

LUBULELLAH & ASSOCIATES ADVOCATE

AND

GILBI CONSTRUCTION COMPANY LTD CLIENT

RULING

1. The instant Ruling relates to two [2] applications namely, the Chamber Summons Application dated the 2nd February 2024 and which has been filed by the Client and wherein same [Client] seeks to procure and obtain extension of time to file a Reference; and the Application dated the 18th April 2024, the latter which has been filed by the Advocates.
2. To the extent that the instant Ruling relates to two [2] Applications [details in terms of the preceding paragraph], it is imperative and appropriate to highlight the reliefs which are sought at the foot of each application.
3. In respect of the Chamber Summons Application dated the 2nd February 2024, the Client has sought for the following reliefs;
 - i. The Honorable court be pleased to enlarge time for the Applicant/Client to file a reference against the taxation ruling by the Taxing Officer, Hon V. Kiplagat DR, delivered on the 16th January 2024.
 - ii. This Honorable court be pleased to set aside the decision of the taxing officer delivered on the 16th January 2024 with respect to the Advocate's Bill of Costs dated 7th June 2023.



- iii. This Honorable court be pleased to remit the Bill of Costs dated the 7th June 2023 for taxation before another Taxing officer other than Hon. V. Kiplagat DR.
 - iv. The costs of this application be provided for
4. Suffice it to point out that the instant application is premised on various grounds which have been enumerated in the body thereof. Furthermore, the application is supported by the affidavit of Harish Gopal Vekaria sworn on even date [2nd February 2024] and to which the deponent has annexed three [3] documents.
5. On the other hand, the Application dated the 18th April 2024 and which has been filed by the Advocate, seeks for the following reliefs;
 - i. The court be pleased to enter Judgment and issue a Decree in favor of the Applicant against the Respondent on the amount of Kshs.480, 450/= certified on the certificate of taxation herein, together with interest at the rate of 14% per annum from the 7th June 2023 being the date of the Bill of Costs, until payment in full.
 - ii. The costs of this Application be provided for.
6. Notably, the latter application is premised on the grounds alluded to and highlighted in the body thereof. Additionally, the subject application is also supported by the affidavit of Eugene Lubale Lubullella sworn on even date.
7. Upon being served with the application dated the 18th April 2024, the Client herein proceeded to and filed a Replying affidavit sworn on the 20th May 2024, and wherein same [Client] has raised various issues inter-alia that the application for entry of judgment is premature and misconceived.
8. Pertinently, the matter herein came up for mention before the court on the 8th May 2024 and wherein the advocates for the respective parties intimated to the court that same [Advocates for the respective parties] had filed two [2] applications which were pending before the court.
9. Furthermore, the advocates for the respective parties covenanted to have the two [2] applications canvassed and disposed of simultaneously. Besides, it was agreed that the parties do file and exchange written submissions.
10. Arising from the agreement by and on behalf of the respective parties, the court proceeded to and circumscribed the timelines for the filing and exchange of written submissions. Instructively, the parties thereafter proceeded to and filed their respective written submissions.
11. For coherence, the submissions filed by and on behalf of the respective parties [details in terms of the preceding paragraph] forms part of the record of the court.

Parties' Submissions:

Client's Submissions:

12. The Client herein filed written submissions dated the 20th May 2024 and in respect of which same [Client] has adopted the grounds at the foot of the Chamber Summons as well as the contents of the supporting affidavit thereto.



13. Furthermore, learned counsel for the Client has thereafter proceeded to and highlighted and canvassed four [4] salient issues for consideration and determination by the court.
14. Firstly, learned counsel for the Client has submitted that the court is seized and possessed with the requisite jurisdiction to adjudicate upon and entertain the reference which has been filed before the court. In any event, learned counsel for the Client has contended that upon the delivery of the impugned Ruling [which culminated into certificate of taxation], the Client proceeded to and instructed same [Advocate] to request for the reasons for the taxation.
15. It was the submissions by learned counsel that upon receipt of instructions from the Client, same proceeded to and wrote a letter to the Hon. Deputy Registrar and wherein same [Advocate for the Client] sought to be availed a copy of the Ruling to enable same [Advocate] to lodge the requisite Notice of Objection to Taxation.
16. Additionally, learned counsel for the Client has submitted that subsequently same proceeded to and lodged a Notice of Objection to Taxation. In this regard, learned counsel for the Client has thus contended that same complied with the provisions of Rule 11[1] of the Advocates Remuneration Order.
17. Secondly, learned counsel for the Client has submitted that there existed a retainer agreement between the Client and the Advocate and hence the Advocate herein was prohibited and/or barred from filing an Advocate Client Bill of Costs for Taxation.
18. Nevertheless, learned counsel for the Client has contended that despite the fact that there was a retainer agreement in terms of the sale agreement dated the 30th October 20-15; the Advocate herein proceeded to and filed an Advocate Client Bill of Costs.
19. Suffice it to point out that learned counsel for the Client has contended that the filing of the Advocate Client Bill of Costs and the subsequent taxation thereof was irregular and illegal and hence same [certificate of taxation] ought to be impugned.
20. Furthermore, learned counsel for the Client has submitted that the taxation of the Advocate Client bill of Costs has breached and violated the doctrine of privity of contract as well as the provisions of Section 45 of the *Advocates Act*, Chapter 16 Laws of Kenya.
21. In support of the foregoing submissions, learned counsel for the client has cited and relied on inter-alia the holding case of National Bank Ltd vs Pipeplastic Samcolit [2001]eKLR; Shital Kapilla vs Narimankhan Brunlehner [2021]eKR and Omulele & Tolo Advocates vs Mount Holdings Ltd [2016]eKLR, respectively.
22. Thirdly, learned counsel for the Client has submitted that the doctrine of privity of contract is indeed binding on the Advocate/Respondent herein, insofar as the sale agreement that was crafted and engrossed by the advocate adverted to the advocates costs thereunder.
23. To vindicate the foregoing submissions, learned counsel for the Client has cited various decision including Mark Otanga Otiende vs Dennis Oduor Aduol [2021]eKLR, Helga Crista Ohany vs IECA Lion General Insurance Company Ltd 2022]eKLR and Innea Likuyani Njiraa vs Agakhan Health Services [2013]eKLR, respectively.
24. Fourthly, learned counsel for the Client has submitted that the Advocate not demonstrated any lawful basis to warrant the entry of Judgment in terms of the certificate of taxation, either as sought or at all.



25. In any event, learned counsel for the Client has submitted that no judgment can be entered on the basis of certificate of taxation insofar as there is in existence an application [reference] challenging the propriety of the certificate of taxation.
26. Arising from the foregoing, learned counsel for the Client has therefore implored the court to find and hold that the Advocates application [application dated 18th April 2024] is devoid of merits and thus ought to be dismissed.

b) Advocate's Submissions

27. The Advocate herein has filed written submissions dated the 29th May 2024 and in respect of which same [Advocate] has addressed the two [2] applications before the court.
28. On the other hand, it is appropriate to point out that the advocate herein has reiterated and canvassed four [4] pertinent issues for determination by the court.
29. First and foremost, learned counsel for the Advocates has submitted that the reference that has been filed by and on behalf of the Client is premature and incompetent insofar as no valid Notice of Objection to Taxation has since been filed and served.
30. Additionally, learned counsel for the Advocate has submitted that it was incumbent upon the Client to file and serve a notice of Objection to taxation itemizing the various items which are sought to be appealed against. In this regard, learned counsel for the Advocates has adverted to the provisions of Rule 11[1] of the Advocates Remuneration Order.
31. To the extent that no valid and compliant Notice of Objection to Taxation was filed by and on behalf of the Client, learned counsel for the Advocate has submitted that no Reference can therefore arise and/or accrue on behalf of the Client.
32. In support of the submissions that the failure to file the Notice of Objection to Taxation vitiates the Reference or intended reference, learned counsel for the Advocate has cited and relied on inter-alia the holding in the case of *Matiri Mburu & Chepkemboi Advocates vs Occidental Insurance Co Ltd* [2017]eKLR; *Machira & Co Advocates vs Arthur K Mgugu & Another* [2012]eKLR; *Tranquility Development Ltd & Andrew Barney Kakuta T/a J S Kakula & Co Advocates* [2017]eKLR; *Joseph Cheruyiot & 3 Others vs Richard Kimutai Mibee* [2021]eKLR and *Nyiha Mukoma & Co Advocates vs Reylords Mwangi Kinyanjui & Another* [2019]eKLR, respectively.
33. Secondly, learned counsel for the Advocates has equally submitted that the honorable court lacks jurisdiction to entertain and adjudicate upon the Reference on behalf of the Client on account that the Reference beforehand has been filed prematurely and prior to leave being granted by the court.
34. Pertinently, learned counsel for the Advocate has submitted that the Client herein has filed an omnibus application and in respect of which same [Client] seeks extension of time to file a Reference and which leave [extension of time] has not been granted.
35. Nevertheless, learned counsel for the Advocate has pointed out that even before the aspect touching on extension of time has been heard and granted; the Client has proceeded to and purported to file a Reference and in respect of which same [Client] is inviting the court to set aside and vary the certificate of taxation.
36. In a nutshell, learned counsel for the Advocates has contended that the honorable court is devoid and bereft of jurisdiction to entertain the purported Reference and/or to grant the reliefs enumerated thereunder.



37. Thirdly, learned counsel for the Advocate has submitted that there was no retainer agreement between the client and the Advocate herein to warrant the invocation and reliance on the provisions of Section 45 of the Advocates Act, Chapter 16 Laws of Kenya.
38. Moreover, learned counsel for the Client has pointed out and clarified that the agreement which is being referenced by the Client herein was a sale agreement between the Client [vendor] and a third party [purchaser] and wherein the Advocate herein only acted as an Advocate retained by the Client and not otherwise.
39. According to learned counsel for the Advocate, the fact that the Advocate herein crafted the sale agreement and ventured forward to attest the execution of the said sale agreement, does not make the advocate a party to the said sale agreement, either in the manner adverted to by the Client or at all.
40. In any event, learned counsel for the Advocate has submitted that the doctrine of privity of contract only binds the parties thereto and not strangers. Consequently and in this regard, learned counsel has invited the court to find and hold that there was no retainer agreement between the client and the advocate herein.
41. Lastly, learned counsel for the Advocate has submitted that the certificate of taxation which was issued and sealed by the taxing officer has neither been reviewed, rescinded and/or set aside. In this regard, counsel has invited the court to find and hold that the advocate has met and satisfied the ingredients highlighted under the provisions of Section 51[2] of the Advocates Act and thus the application beforehand ought to be allowed.
42. Other than the foregoing, learned counsel for the Advocate has also implored the court to grant interests in accordance with the provisions of Rule 7 of the Advocates Remuneration Order. For good measure, learned counsel for the Advocate has contended that such interests ought to be decreed from the date of the lodgment of the Bill of Costs.
43. To support the submissions that Judgment ought to be entered in terms of the certificate of costs, counsel for the Advocate has cited and relied on inter-alia the holding in Lubullela & Associates vs N.K Brothers Ltd [2014]eKLR, Alex Otieno Omayo T/a Omayo & Co Advocates vs Piedmond Investment Ltd [2018]eKLR and Muri Mwaniki & Wamiti Advocates vs John Ngigi Ng'ang'a & Another [2014]eKLR, respectively to vindicate the position that Judgment ought to be entered in terms of the certificate of taxation.

Issues for Determination:

44. Having appraised the applications beforehand [whose details were highlighted in the preamble herein before], and having considered the written submissions filed by and on behalf of the respective parties, the following issues crystalize and are thus worthy of determination;
 - i. Whether the Honorable court has jurisdiction to entertain and/or adjudicate upon [sic] the Reference by the Client or otherwise.
 - ii. Whether the Advocate has met and established the requisite conditions envisaged by the provisions of Section 51[2] of the Advocates Act or otherwise.

ANALYSIS AND DETERMINATION:

ISSUE NUMBER 1

Whether the Honorable court has jurisdiction to entertain and/or adjudicate upon [sic] the Reference by the Client or otherwise.



45. The Client herein has approached the court vide the Chamber Summons Application dated the 2nd February 2024 and in respect of which same [Client] has sought for various reliefs. Instructively, one of the cardinal reliefs that has been sought for by the client relates to extension of time within which to file a Reference against the taxation ruling [certificate of taxation] by the taxing officer.
46. Other than the prayer for extension of time to enable the Client to file a Reference, the Client has simultaneously ventured forward and impleaded substantive reliefs as pertains to the setting aside of the certificate of taxation.
47. To my mind, the Client herein has placed before the court an omnibus application in respect of which same is on one hand seeking the indulgence of the court to extend time whilst on the other hand same [Client] and even before extension of time, has filed the Reference.
48. In my humble view, the application that has been filed by the Client which seeks extension of time and the setting aside of the certificate of taxation simultaneously is muddled up and indeed vitiated to the core.
49. To start with, if the Client was desirous to procure and obtain leave of the court or extension of time to file the Reference, then it behooved the Client to proceed with the aspect seeking extension of time and subject to procuring an order thereof to file the reference.
50. However, in respect of the instant matter, the Client has failed to procure and obtain leave beforehand but nevertheless, same [Client] has proceeded to file what same [Client] deems to be a Reference.
51. In my humble view, the joinder of the substantive prayers [read prayer for setting aside of the certificate of taxation] is not only presumptuous but also misconceived and legally untenable.
52. Pertinently, it was incumbent upon the Advocate for the Client to discern the appropriate way forward and not to throw on the face of the court an omnibus application, which is inherently contradictory and confusing.
53. In my humble view, if the Client certainly knew that leave [extension of time was a requirement] then the client was obligated to obtain leave beforehand.
54. In short, the filing or joinder of the substantive reliefs for setting aside the certificate of taxation, with the application for leave [extension of time] is tantamount to putting the wagon before the horse, which is unfathomable and inconceivable in legal space.
55. Without belaboring the point, it is my finding and holding that if the Client was intended to obtain extension of time then same ought to have been procured and obtained beforehand.
56. Furthermore, I also find and hold that the substantive prayers which have been joined together with the application for extension of time are a nullity ab initio and thus legally untenable.
57. To this end, it suffices to take cognizance of the holding of the Supreme Court of Kenya [the apex court] in the case of Nicholas Kiptoo Arap Salat Korir vs IEBC & 6 Others [2014]eKLR, where the court stated ad held thus;

“What we hear the applicant telling the Court is that he is acknowledging having filed a ‘document’ he calls ‘an appeal’ out of time without leave of the Court. Pursuant to rule 33(1) of the Court’s Rules, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under rule 53 of the Court’s Rules, this Court can indeed extend time. However, it cannot be gainsaid that where the law provides for the time within which



something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires.

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

58. Likewise, the Supreme Court of Kenya re-visited the position in the case of *County Executive of Kisumu v County Government of Kisumu & 8 others (Civil Application 3 of 2016)* [2017] KESC 16 (KLR) (12 April 2017) (Ruling), where the court stated thus;

(35) We are in total agreement with the respondent that an appeal filed in this Court out of time without leave of this Court is irregular and this Court will not invoke such ‘novel’ principles as urged by applicant so as to validate that petition and deem it as properly filed. We buttress this Court’s position in Nicholas Salat when this Court stated thus:

“...In his submissions, counsel for the applicant acknowledged having already filed his appeal. He now prays for extension of time and urges that once so granted, the Petition of appeal already filed be deemed to have been duly filed.

What we hear the applicant telling the Court is that he is acknowledging having filed a ‘document’ he calls ‘an appeal’ out of time without leave of the Court. Pursuant to rule 33(1) of the Court’s Rules, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under rule 53 of the Court’s Rules, this Court can indeed extend time. However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires.

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court.

It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the least (sic) he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court’s Record.”

Consequently, were we to grant extension of time in this matter, we will not hesitate to accede to the respondents’ request, if the same is found to be the position that a petition of appeal had in fact been filed in this Court without leave of Court extending time.



59. What I hear the Supreme Court to be stating is to the effect that where a litigant desires to procure and obtain leave [extension of time] then such leave or extension of time must be obtained before the doing of the act for which the extension of time was being sought.
60. However, in respect of the instant matter, the Client has sought for extension of time but even before the limb seeking for extension of time has been considered and adjudicated upon same [Client] has gone ahead and sought for the substantive reliefs.
61. Without belaboring the point, I hold the view that the court has no jurisdiction to venture forward and entertain the substantive reliefs either in the manner impleaded or at all.
62. Secondly, it is also worth pointing out that even if the court were to imagine that the Client could file the omnibus application and that same [application] could still be heard, it is worthy to point out that whosoever wishes to lodge a Reference is obligated to file and serve a compliant Notice of Objection to Taxation.
63. Pertinently, the Notice of Objection to Taxation must not only be filed and served within 14 days from the date of the delivery of the Ruling, but same must enumerate [highlight] the items that are sought to be impugned vide the Reference] [See Rule 11[1] of the Advocates Remuneration Order.
64. Suffice it to point out that the provisions of Rule 11[1] of the Advocate Remuneration Order are couched in mandatory [read peremptory] terms and hence it is obligatory upon the Applicant to comply with same.
65. In any event, the issuance and service of the requisite Notice of Objection to Taxation [which can be equated with a Notice of Appeal to the Court of Appeal] constitutes a jurisdictional pre-requisite without which the court is deprived of the requisite jurisdiction.
66. Nevertheless, the significance of filing and serving the requisite Notice of Objection to Taxation was highlighted and amplified by the Court of Appeal in the case of Machira & Co. Advocates v Arthur K. Magugu & another [2012] eKLR, where the court held thus'
 12. Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects.” As the trial judge correctly found, the Respondents notice of 1st August 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.
 13. As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeals or reviews was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of 1st August 2001 was fatally defective. It follows that the Respondents reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out.



67. Similarly, the importance of Rule 11 of the Advocates Remuneration Order was also elaborated upon in the case of *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited* [2017] eKLR, where the court held as hereunder;

6. In my own view the provisions of paragraph 11 of the Remuneration Order serve several purposes. Firstly the requirement that a party seeking reasons gives notice of items objected to, serves to narrow down the issues, and secondly, give notice to the adverse party and the taxing master of his objection. Thus the taxing master, adverse party and ultimately the reference court in their respective roles can focus on the specific matter objected to rather than entire bills of costs, which often run into several pages.

7. The objective is obvious: the expeditious disposal of taxation disputes. Thus compliances with the requirements of paragraph 11 of the Remuneration Order is not a mere technicality that can be pushed aside preemptorily as the Applicant appears to suggest.

The provisions of Article 159 (2) (d) of *the Constitution* were not intended to overthrow procedural or technical requirements, but to guard against “undue regard” to procedural technicalities in the administration of justice.

68. Having analyzed the various perspective attendant to application by and on behalf of the Client herein, I am constrained to and do hereby state that the court is divested of the requisite jurisdiction to entertain and/or engage with the substantive reliefs sought at the foot of [sic] the Reference.

69. Furthermore, it is also imperative to underscore that the entire Reference [which I have found that I have no jurisdiction to deal with] is similarly vitiated by want of compliance with the preemptory provisions of Rule 11[1] of the Advocates Remuneration Order.

70. In a nutshell, my answer to issue number one [1] is twofold. Firstly, the application by the Client is omnibus; and secondly, same is fatally incompetent.

ISSUE NUMBER 2

Whether the Advocate has met and established the requisite conditions envisaged by the provisions of Section 51[2] of the *Advocates Act* or otherwise.

71. Other than the application by and on behalf of the Client and wherein same had sought to impugn the certificate of taxation, the Advocate herein has sought for entry of judgment.

72. Suffice it to point out that the Advocate contends that the certificate of taxation which was issued by the taxing officer has neither been reviewed, varied nor rescinded. Consequently, the Advocate contends that the certificate of taxation is thus ripe for adoption as the judgment of the court.

73. Pertinently, the certificate of taxation can be adopted and endorsed as a Judgment of the court subject to compliance with the provisions of Section 51[2] of the *Advocates Act*.

74. For good measure, the provisions of Section 51[2] of the *Advocates Act* provides as hereunder;

51. General provisions as to taxation:



- (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
 - (2) 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.
75. From the provisions [supra], it is evident that an Applicant desirous to attract judgment on the basis of a certificate of taxation must demonstrate to the court the following items;
- i. There exists a certificate of taxation.
 - ii. The certificate of taxation has neither been varied, reviewed and/or rescinded; and
 - iii. There is no dispute as pertains to retainership.
76. Having reviewed and considered the evidence of record; as well as the submissions by the Advocates for the respective parties, what is evident is that there is no dispute on the question of retainer.
77. Put differently, learned counsel for the client admits and concedes that indeed the advocate herein was instructed and engaged to act for the Client. Furthermore, it is conceded that the Advocate indeed rendered professional services.
78. Nevertheless, the only issue in contention by the Client is that there was a retainer agreement and hence the Advocate herein ought not to have filed an Advocate Client Bill of Costs.
79. To my mind, the critical question that the court must grapple with and answer does not relate to whether there is a dispute as pertains to retainer.
80. Pertinently, having considered the position taken by and on behalf of the Client, I encounter no difficulty in finding and holding that there is no dispute as pertains to retainer. Simply put, retainer is admitted and conceded.
81. The second issue for consideration relates to whether or not the certificate of taxation has been reviewed, varied and/or set aside. However, there is no gainsaying that the certificate of taxation under reference remains in situ and has never been varied and/or set aside.
82. To my mind, the Advocate herein has established and demonstrated [satisfied] the ingredients envisaged under the provisions of Section 51[2] of the *Advocates Act*.
83. Having found and held as much, it then means that there is no impediment to the entry of judgment in terms of the certificate of taxation. Quite clearly, the entry of judgment in terms of the certificate of taxation is the only lawful recourse available to the court taking into account the explicit provisions of Section 51[2] of the Act.
84. Before departing from the issue herein, it is worth pointing out that the Advocate herein had sought for interests at 14% per annum from the date of lodgment of the Bill of Costs before the court. For coherence, the Advocate seeks for interest w.e.f 7th June 2023.



85. Nevertheless, even though the Advocate has sought for interests from the lodgment of the Bill of Cost, however, the correct legal position is that interest is chargeable and awardable from the date of service of the Bill of Costs and not lodgment of same in court.
86. To my mind, the affidavit of service on record shows that the Bill of Costs was served upon the Respondent on the 17th August 2023. [See the contents to the affidavit of service of Josphat Keteka Kwatikwi sworn on 21st August 2023].
87. In view of the foregoing, the Advocate herein can only be entitled to charge interest reckoned and computed upon lapse of 30 days from the date of service of the Bill of Costs. In this regard, the timeline for charging and levying interests taking into account the provisions of Rule 7 of the Advocates Remuneration Order runs from the 17th September 2023 and not otherwise.
88. For brevity, Rule 7 of the Advocates Remuneration Order provides as hereunder;

7.

Interest may be charged 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.

89. To buttress the foregoing exposition of the law, I share in and adopt the sentiment[s] of the court in the case of Muri Mwaniki Wamiti Advocates V. John Ngigi Nganga & Another [2014]eKLR, where the court stated and observed as hereunder;

(6) I have carefully considered the decisions in the cases of Achola Jaoko & Company Advocates Vs Nelson Construction Services Ltd (2010) eKLR, Kagwimi Kang'ethe & CO. Advocates Vs Mits Electrical Co. Ltd & 2 others (2005) eKLR, and Kantai & Co. Advocates Vs Crest Hotel Limited Misc. Application No. 1373 of 2006. My understanding of Rule 7 of the Advocates Remuneration Order is that interest is chargeable from the expiration of one month from delivery of the bill of costs by the advocate to the client but before the amount of the bill has been paid or tendered in full. The reference point is delivery of the bill. Evidence of delivery is necessary. There are two inextricable conditions here; that the bill should have been delivered and not paid within one month thereof. That means that if the amount of the bill is paid before expiry of one month from its delivery, no interest shall be payable under the bill. To my mind, Rule 7 of the Advocates Remuneration Order does not refer to the Certificate of Costs but the bill of costs. However, each case should be decided on its merits and circumstances. In the present case delivery was done on 8th April, 2013. The amount of costs was not paid within a month from delivery of bill. Therefore, and I hereby order that interest will be charged on the sum of Kshs. 127,320 from expiration of one month from delivery of his bill to the client, i.e. from 8th May, 2013 until the time the costs were paid. The amount of the bill may be different from the taxed costs. But for all purposes of rule 7 of the Advocates Remuneration Order, interest should be on the amount in the Certificate of Costs as those are the costs which are payable.



90. In a nutshell, my answer to issue number two [2] is to the effect that the advocate herein is indeed entitled to entry of Judgment in terms of the certificate of taxation as well as interest, save that the claim on account of interests shall be reckoned from the 17th September 2023 and not otherwise.

Final Disposition:

91. From the foregoing analysis [details in terms of the preceding paragraphs] it is evident and apparent that the Reference by the Client is premature, misconceived and legally untenable.

92. On the contrary, the application by and on behalf of the Advocate meets the threshold envisaged by the provisions of Section 51[2] of the Advocates Act, Chapter 16 Laws of Kenya and hence same is meritorious.

93. In the premises, I am minded to and do hereby make the following orders;

- i. The Reference dated the 2nd February 2024 be and is hereby struck out.
- ii. Costs of the Reference assessed in the sum of Kes.25, 000/= only are hereby awarded to the Advocate.
- iii. The application dated the 18th April 2024 is hereby allowed and Judgment is entered in terms of the certificate of taxation dated the 16th January 2024.
- iv. Interest is hereby awarded at 14% in accordance with Rule 7 of the Advocates Remuneration Order w.e.f 17th September 2023.
- v. Costs of the application assessed at Kes.25, 000/= only are hereby awarded to the Advocate and same shall be borne by the Client.

94. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE, 2024.

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – Court Assistant

Mr. Eugene Lubulella for the Advocate

Ms. Lilly Ngeresa for the Client

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