



REPUBLIC OF KENYA



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**Otieno, Ragot & Co Advocates v Chemelil Sugar Co Ltd (Miscellaneous
Case E019 of 2021) [2025] KEELRC 56 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 56 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E019 OF 2021**

**JK GAKERI, J
JANUARY 22, 2025**

BETWEEN

OTIENO, RAGOT & CO ADVOCATES APPLICANT

AND

CHEMELIL SUGAR CO LTD RESPONDENT

RULING

1. Before the Court for determination is the Applicant's Notice of Motion dated 15th May, 2024 seeking Orders that:
 1. The Certificate of costs dated 18th April, 2023 be adopted as the judgment and decree of this Court and judgment be accordingly entered for the Advocate against the client in the sum of Kshs.140,584.60 with interest at 14% per annum from 15th August, 2020 until payment in full.
 2. The costs of these proceedings be borne by the client/Respondent.
2. The Notice of Motion is expressed under Section 51(2) of the *Advocates Act* and is based on the grounds set out on its face and the Supporting Affidavit sworn by Winnie Anuro on 1st May, 2024 who deposes that at the client's request dated 2nd February, 2006, the Applicant entered appearance and represented the client in Kisumu ELRC Appeal No.11 of 2018 *Chemelil Sugar Co. Ltd v George Omondi Athembo* to its logical conclusion and presented a pro forma invoice for payment of professional fees dated 16th, July, 2020 but it was not settled and was subsequently taxed in the sum of Kshs.140,584.60 and a Certificate of Costs dated 18th April, 2023 issued and the same has neither be set aside or altered and no reference is pending.
3. The Applicant is thus claiming from the respondent the sum of Kshs.140,584.60 and interest at the rate of 14% effective 15th August, 2020, being 30 days after presentation of the final fee note to the Respondent till payment in full.



4. The affiant deposes that the claim for interest can only be enforced if the certificate of costs is adopted as a judgment of the Court.

Grounds of opposition

5. The Respondent, on the other hand avers that interest on the taxed bill should run from 18th April, 2023 when taxation took place as opposed to when the pro forma invoice was served upon the Respondent.
6. In a Further Affidavit sworn on 12th July, 2024, the affiant deposes that the trial Court awarded the Claimant Kshs.126,000.00 plus costs and interest which decision the Respondent appealed and was represented by the Applicant which culminated in the presentation of the pro forma invoice.

Applicants Submissions

7. Concerning from when interest should run the Applicant cites the provisions of Sections 51(2) of the *Advocates Act* and Rule 7 of the *Advocates Remuneration Order*.
8. That the latter provides that the 14% interest ought to be computed as from one month from the date of delivery of the Advocates bill to the client and the client had not denied receipt of the final fee note dated, 16th July, 2020.
9. According to Counsel, the Bill referred to in Rule 7 is not the Bill of Costs filed in Court for taxation.
10. Reliance made on the sentiments of the Court in *Otieno, Ragot & Co. Advocates v Kenindia Assurance Co. Ltd* [2016] eKLR, *Wainaina Ireri & Co. Advocates v Kenya Bus Services Ltd* [2005] eKLR, *A. M. Kimani & Co. Advocates v Kenindia Assurance Co. Ltd* [2006] eKLR and *Muri Mwaniki & Mamiti Advocates v Berbern Company Ltd*. [2017] eKLR as to when interest should ran, to urge that interest should ran from the date when the bill demanding payment of fees is delivered to the client for settlement.
11. Counsel urges that the term ‘Bill’ under Rule 7 of the *Advocates Remuneration Order* signifies the final fee note presented to the client for payment by whatever name called as delivered to the client for payment.
12. Finally, Counsel urges that since the final fee note was sent to the client on 16th July, 2020 by courier, interest should be charged from 15th August, 2020, one month after the date of delivery.
13. It is submitted that the Respondent should also bear costs of the instant Application.
14. My Oyuko for the Respondent submitted that the Applicant had not availed evidence to prove that the fee note was presented on 16th July, 2020 and urges that interest should run from the date the bill was accessed by the Deputy Registrar and it is presumed to be the date of the ruling.
15. Counsel submitted that as the sum of Kshs.140,584.60 as taxed and the certificate of costs dated 18th April, 2023 is not challenged, varied or altered, and no reference application is pending, the Court is satisfied that the Applicant is entitled to judgment in the sum of Kshs.140,584.60 and the same is entered accordingly in accordance with the provisions of Section 51(2) of the *Advocate Act*.
16. The only issue for determination is whether interest on the sum of Kshs.140,584.60 should run from 15th August, 2020 or 18th April, 2023 when the ruling on taxation was delivered.
17. While the Applicant urges the former the Respondent urges the latter.



18. The fulcrum in the determination of this issue is Rule 7 of the *Advocates Remuneration Order* which provides that:
19. An Advocate may charge interest at 14 per cent per annum of his disbursement and costs whether by scale or otherwise from the expiration of one month from the delivery of the Bill to the client providing such claim for interest is raised before the amount of the Bill has been paid or tendered in full.
20. As the rule states, that point at which interest ought to be claimed is when the advocate makes the claim in the fee note or the Bill of Costs as held by the Court of Appeal in *Otieno, Ragot & Co. Advocates V Kenindia Assurance Co. Ltd* [2023] KECA KLR.
30. In the instant case, although the applicant deposes and submits that they sent a pro forma invoice to the client/respondent on 16th July, 2020, the affiant did not attach a copy of the forwarding letter or evidence to show that it was actually received by the client as argued by the Respondent’s Counsel.
31. Central to the foregoing is a determination whether a pro forma invoice is a ‘bill’ as envisaged by Rule 7 of the Advocates Remuneration Order, a critical issue the Applicant did not address.
32. In determining this issue, the Court is guided by the sentiments of the Court in *Muri Mwaniki & Wamiti Advocates v John Ngigi Ng’ang’a & Another* [2014] eKLR, cited by Majanja J in *Otieno, Ragot & Co. Advocates v National Bank of Kenya Ltd* [2016] eKLR, the Court held that:
- "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. Evidence of delivery is necessary. To my mind Rule 7 of the *Advocates Remuneration Order* does not refer to the certificate of costs but the Bill of Costs...
- The amount of the Bill may be different from the taxed costs. But for all purposes of Rule 7, interest should be on the amount in the certificate of Costs as those are the costs which are payable."
33. In the words of Maina J. in *Otieno, Ragot & Co. Advocates v Kenindia Assurance Co. Ltd* [2016] eKLR.
- "In my view the bill referred to in this rule is the Advocates final bill setting out the disbursements and costs which he then requires the client to pay but not a bill which he intends to file for taxation..."
34. In *Otieno Ragot & Co. Advocates v Kenindia Assurance Co. Ltd* [2021] eKLR,
- "While I agree with the Advocate that the document referred to is Rule 7 of the *Advocates Remuneration Order* is definitely a fee note I do not share the view that a pro forma invoice is a bill...
- It would therefore follow that that which is an advance document upon which the actual invoice or bill will be derived cannot also be the final bill...
- The Rule specifically talks about the Advocates Bill, but not a pro forma invoice or any other document howsoever described"
35. Similarly, in *Otieno Ragot & Co. Advocates v Winam Chemists Ltd* Civil case No. 54 of 2019 Ochieng J. expressed the view thus:
- "A pro forma invoice does not give rise to any legal obligations upon the person to whom it is addressed..."



A pro forma invoice does not give rise to any legal obligations upon the person who sent it. In contract, an invoice is deemed to be an asset for the person who sent it...

The pro forma invoice may look like an invoice or bill but it is not”.

36. In *Otieno Ragot & Co. Advocate v Kenindia Assurance Co. Ltd* [2020] eKLR, Ochieng J. expressed himself as follows:

”The document which the Applicant sent to the Respondent was a Proforma Invoice. Accordingly, it was not a bill as envisaged under rule 7 of the Advocates Remuneration Order. I find that interest was not payable from the date when the alleged “Bill” was sent or was delivered to the Respondent”.

37. The foregoing authorities demonstrate beyond peradventure that a pro forma invoice is neither a Bill nor a fee note as contemplated by rule 7 of the Advocates Remuneration Order and the Court is so persuaded.

38. Finally, in *D. Njogu & Co. Advocates v Kenya National Capital Corporation* [2006] eKLR Ochieng J. stated inter alia

...It is for that reason that I hold that the date from when interest should be calculable should be pegged to the date when the advocate sends the correct fee note. And by the correct fee note I mean the bill which is in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client does not dispute or the bill which is in accordance with the sums awarded by either the taxing officer or by the Deputy Registrar in the certificate of costs”.

37. Guided by the provisions of the *Advocates Act*, Rule 7 of the *Advocates Remuneration Order* and relevant judicial authority it is the finding of the Court that the Applicant has not demonstrated delivery of a Bill to the respondent in compliance with Rule 7 of the *Advocates Remuneration Order*.

38. The certificate of costs dated 18th April, 2023 is adopted as a judgment of this court in favour of the Applicant/Advocates.

39. However, on interest, the Court is in agreement with the Respondent that interest on the taxed Bill of Costs should run from 18th April, 2024, when taxation was done.

40. In the circumstances it is only fair that parties bear own costs of the application dated 15th May, 2024.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 22ND DAY OF JANUARY, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of



Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

