



Kemboy Law Advocates v Narok County Government (Miscellaneous Application E009 of 2023) [2024] KEELC 13240 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13240 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION E009 OF 2023**

**EM WASHE, J
NOVEMBER 18, 2024**

BETWEEN

KEMBOY LAW ADVOCATES ADVOCATE

AND

NAROK COUNTY GOVERNMENT CLIENT

RULING

1. The firm of advocates known as KEMBOY LAW ADVOCATES (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 02.05.2024 (hereinafter referred to as “the present Application”) seeking for the following Orders against NAROK COUNTY GOVERNMENT (hereinafter referred to as “the Respondent”); -
 - a. That on instructions of the Client/Respondent, the Advocate/Applicant acted in KILGORIS ELC CASE NO. 5 OF 2021 BETWEEN CALLEN KEMUNTO OGEMBO-VERSUS-NAROK COUNTY GOVERNMENT & ANOTHER.
 - b. That the Advocate-Client Bill of Costs dated 13th March 2023 in respect to the services rendered was on 10th August, 2023 taxed as between Advocate and Client and allowed as against the Client/Respondent in the sum of Kenya Shillings Three Hundred and Forty-Five Thousand, Five Hundred and Sixty-Five and Fifty Cents (KShs 345,565.50/-).
 - c. That a Certificate of Taxation for the said amount was issued on the 18th April 2024.
 - d. That the said Certificate of Taxation has not been set-aside or altered.
 - e. That it is apparent that there has been no dispute as to retainer.
 - f. That it is in the best interest of justice that the orders sought herewith be granted.



2. The prayers sought hereinabove are supported by the grounds contained in the Supporting Affidavit of JEPHER K. KERE sworn on the 02.05.2024 which states as follows; -
 - i. The firm of Advocates/Applicants herein received instructions from the Client/Respondent to represent them in the proceedings known as KILGORIS CMCC ELC CASE NO. 5 OF 2021 BETWEEN CALLEN KEMUNTO OGEMBO-VERSUS- NAROK COUNTY GOVERNMENT & ANOTHER.
 - ii. Thereafter, the Advocate/Applicant filed a Bill of Costs dated 13th March 2023 which was taxed on 10th August 2023 at a sum of Kenya Shillings Three Hundred and Forty-five Thousand, Five Hundred and Sixty-five and Fifty Cents (KShs 345,565.50/-).
 - iii. A Certificate of Costs dated 18th April 2024 was subsequently issued thereof which has not been set-aside and/or altered.
3. The present Application was duly served on the Client/Respondent who opposed the same by filing a Replying Affidavit dated 19.07.2024 on the following grounds; -
 - a. The present Application was unmeritorious, vexatious, frivolous and an abuse of the Court process.
 - b. The Client/Respondent pleaded that the Advocate/Applicant was not entitled to any 14% interest on the taxed Bill of Costs.
 - c. The Client/Respondent sought to rely on the provisions of Paragraph 7 of the Advocates Remuneration Order which provides as follows; -

“ 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 the bill shall have been paid or tendered in full.”
 - d. The Client/Respondent’s submission was that the Advocate/Applicant never submitted his Bill of Costs to them as required by law and therefore his claim of 14 per cent interest cannot be allowed.
 - e. The Client/Respondent further pleaded that it was a public entity expected to protect and diligently utilise the public funds allocated to it and therefore payment of the 14 per cent interest being claimed by the Advocate/Applicant would be wastage of public funds.
 - f. The Client/Respondent relied on the case of REPUBLIC-VERSUS- MINISTER FOR AGRICULTURE & 2 OTHERS EX-PARTE SAMUEL MUCHIRI W’NJUGUNA & 6 OTHERS (2006) eKLR.
 - g. In conclusion thereof, the Client/Respondent sought this Court to dismiss the present Application with costs.
4. In an effort to amicably resolve the present Application, the parties herein entered a Consent on the 16.09.2024 to the effect that the Certificate of Costs dated 18.04.2024 be converted into a Judgement of this Court.
5. The only issue that now remained for litigation between the parties was whether or not the Advocate/Applicant was entitled to the 14 per cent per annum interest against the Client/Respondent on the taxed amount.



6. The Court directed that parties do canvass the issue by way of written submissions and the Advocate/Applicant filed their submissions dated 16.09.2024 while the Client/Respondents had not filed their submissions as on the 03.10.2024 when this matter was fixed for Ruling.
7. The Court has indeed perused at the present Application, the Replying Affidavit of the Client/Respondent and the submissions by the Advocate/Applicant and the issues for determination are substantively two; -
SUBPARA ISSUE NO. 1-
Whether or not the Bill of Costs by the Advocate/applicant Served on the Client/respondent?
SUBPARA ISSUE NO. 2-
Is the Advocate/applicant entitled to interest at the Rate of 14 % on the assessed Amount?
8. On the first issue for determination, the Advocate/Applicant submitted that the Bill of Costs dated 13th March 2023 was served on the Client/Respondent on the 15th June 2023.
9. Both parties rely on the provision of Paragraph 7 of the Advocates Remuneration Order which provides as follows; -

“An Advocate may charge interest at 14 per cent per annum on his disbursement and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his Bill of Costs 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.”
10. The disagreement between the Advocate/Applicant and the Client/Respondent is how to interpret the above proviso of the Advocates Remuneration Order on when interest should be allowed.
11. To begin with, the issue of whether an Advocate is entitled to Interest on his/her Bill of Costs is actually settled as Paragraph 7 of the Advocates Remuneration Orders allows for the same.
12. The question therefore is in what circumstances the same should be allowed by the Court.
13. According to the Court interpretation of Paragraph 7 of the Advocates Remuneration Order, Interest is allowable after 30 days from the date of delivery and/or service of the Bill of Costs on the Client/Respondent.
14. Secondly, Interest should be charged after 30 days from the time of delivery and/or service of the Bill of Costs and its calculation stops once the assessed and/or taxed amount is paid in full and/or tendered.
15. In this particular case, the Advocate/Applicant pleaded that the Bill of Costs dated 13th March 2023 was served on the Client/Respondent on the 15th of June 2023.
16. Although the Advocate/Applicant did not file an Affidavit of Service to that effect, the Client/Respondent in their Certificate of Urgency dated 11.07.2023 and specifically Paragraph 2 admitted that the Advocate/Applicant Bill of Costs dated 13th March 2023 was served on them on 15th June 2023.
17. Consequently, this Court hereby makes a finding that the Advocate/Applicant was entitled to Interest on the Bill of Costs dated 13th March 2024 with effect from 30 days after 15th June 2023 when the same was served on the Client/Respondent.



Issue No. 2- Is the Advocate/applicant entitled to Interest at the rate of 14 % on the assessed amount?

18. This Court having made a finding that the Advocate/Applicant was entitled to Interest against the Client/Respondent, the second issue is the percentage allowable by law.
19. The Advocate/Applicant is seeking an Interest rate of 14 per cent per annum as provided by Paragraph 7 of the Advocates Remuneration Order.
20. In the case of AMONDI & COMPANY, ADVOCATES-VERSUS- COUNTY GOVERNMENT OF KISUMU (2021) eKLR, the Court made the following finding; -
15. It therefore follows that under the Advocates Act, the Court does not have discretion to award any rate of interest, even if the Court deems such a rate as reasonable in the circumstances. Whilst Section 26 of the Civil Procedure Act authorizes the Court to award any reasonable rate of interest; the Advocates Act specifies the rate as 14% per annum.”
21. Based on the above finding which this Court fully associates itself with, it is clear from the provisions of Paragraph 7 of the Advocates Remuneration Order and Judicial determinations that the applicable and allowable Interest on a Bill of Costs is 14 per cent per annum.

DIVISION - Conclusion

22. In essence, this Court hereby makes the following Orders in deciding the Issue of Interest between the Advocate/Applicant and the Client/Respondent; -
- A. The advocate/applicant is entitled to interest of 14% per annum with effect from 15.07.2023 until when the client/respondent has fully settle the certificate of costs dated 18.04.2024 and adopted as an judgement of this court on the 16.09.2024.
- B. The advocate/applicant shall also be entitled to the costs of this application to be paid by the respondent.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 18TH NOVEMBER 2024.

EMMANUEL.M.WASHE

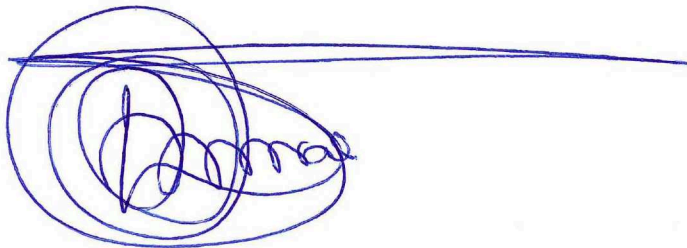
JUDGE

In the presence of:

Court Assistant: Mr. Ngeno

Advocates for the Applicant: Mr. Kere

Advocates for the Respondent: Mr. Mumo



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