



Simba & Simba Advocates v FEP Holding Limited (Miscellaneous Application E681 of 2022) [2025] KEHC 2200 (KLR) (Commercial and Tax) (27 January 2025) (Ruling)

Neutral citation: [2025] KEHC 2200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E681 OF 2022
CJ KENDAGOR, J
JANUARY 27, 2025**

BETWEEN

SIMBA & SIMBA ADVOCATES ADVOCATE

AND

FEP HOLDING LIMITED CLIENT

(In the matter of services rendered in Nairobi High Court Milimani Civil Suit No. 20 of 2018 between FEP Holdings Limited vs Meridian Health Group Limited and the resultant arbitration thereto)

RULING

Background

1. This is a Ruling on the Applicant/Advocate's Application dated 12th March, 2024. The genesis of the case is that the Client/Respondent instructed the Advocate/Applicant to initiate legal proceedings to recover the money owed to them. Upon receiving these instructions, the Advocate/Applicant filed Milimani High Court Civil Suit No. 20 of 2018 on behalf of the Client/Respondent as instructed. The case was later referred to arbitration.
2. To collect and recover its legal fees, the Applicant prepared an Advocate-Client Bill of Costs dated 8th September, 2022, and served it upon the Respondent via a Notice of Taxation on 10th January, 2023. The Respondent, through their appointed advocates, J.K. Kibicho & Company Advocates, opposed the Bill of Costs. They filed responses and actively participated in the taxation proceedings.
3. On 12th October, 2023, the Taxing Master assessed the Bill of Costs at Kshs.3,500,000. A Certificate of Taxation was issued on 8th December, 2023. The Applicant believes that the Respondent was properly



- served with the Certificate of Taxation but has since refused or declined to pay the outstanding amount leading to the current application.
4. The application dated 12th March, 2024 is seeking the following orders:
 - i. That Judgment be entered in favour of the Applicant and as against the Respondent for Kshs.3,500,000/= as more particularly ascertained by the Taxing Officer and contained in the Certificate of Taxation dated 8th December 2023.
 - ii. That the Respondent do pay interest on the sum of Kshs.3,500,000/= from 8th September, 2022, the date the Bill of Costs was presented for Taxation till payment in full.
 - iii. That the Respondent be condemned to pay the costs of this Application in any event.
 5. The Application was canvassed by way of written submissions.
 6. The Applicant, in their written submissions, asked the Court to consider three issues for determination:
 - i. whether judgment should be entered for the amount certified in the Certificate of Costs dated 8th December, 2023;
 - ii. whether the respondent should pay interest on this amount from the date the Bill was served until payment in full; and
 - iii. who should bear the costs of this application.
 7. On the other hand, the Respondent focused on one issue for determination:
 - i. whether interest on the applicant's costs is payable from the date of filing the Bill of Costs or from the date the costs were ascertained.
 8. The Applicant argued that this application was submitted under Section 51 (2) of the *Advocates Act*. They stated that according to that provision, the Certificate of Taxation issued by the Taxing Master is final regarding the amount taxed. Consequently, the Court may issue any appropriate orders, including entering judgment for the amount certified as due.
 9. The Applicant relied upon the following authorities to bolster their argument; Otieno, Ragot & Company Advocates –vs- Kenya Airports Authority [2021] eKLR, Kalonzo Musyoka & Paul M. Wambua (Practising as Musyoka & Wambua, Advocates) –vs- Rustam Hira (Practising as Rustam Hira, Advocates) [2006] eKLR, Lubelellah & Associates Advocates –vs- N.K. Brothers Limited [2014] eKLR and Nzei & Company Advocates –vs- Davis Mutiso Nthege [2016] eKLR.
 10. On the interest chargeable on an Advocate's Bill of Costs, the Applicant urged the Court to find that the interest chargeable ought to be charged from 8th September, 2022 when the said Bill was presented for taxation until payment in full. The Applicant relied on Paragraph 7 of the Advocates Remuneration Order, Section 26 of the *Civil Procedure Act* and the case of Otieno, Ragot & Company Advocates –vs- Kenya Airports Authority [2021] eKLR.
 11. The Respondent maintained that interest on costs should begin accruing from the dates when the costs were determined, rather than from the date the Bill of Costs was filed. They explained that this viewpoint is based on the fact that, at the time the Bill of Costs was submitted, the total costs owed were still unknown.
 12. The Respondent relied on the following cases: D. Njogu & Company Advocates v. Kenya National Capital Corporation [2006] eKLR and Amondi & Company Advocates v. County Government of



Kisumu [2021] eKLR. The Respondent contended that applying interest from the date of filing instead of the date of taxation would unfairly increase the interest amount on those costs.

Issues for determination

- i. Whether judgment should be entered for the sum as certified in the Certificate of Costs dated 8th December, 2023,
- ii. Whether the Respondent should pay interest on Costs from the date the Bill was served on the Respondent until payment in full, and
- iii. Who should bear the costs of this Application.

Analysis and Determination

a. Whether judgment should be entered for the sum as certified in the Certificate of Costs dated 8th December, 2023

13. The Advocates/Applicant relied on Section 51 (2) of the [Advocates Act](#) which provides: -

“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.

14. After carefully reviewing the written submissions from both parties, it was evident that the Certificate of Costs issued by the Taxing Officer had not been set aside or altered. Additionally, no reference was made under Paragraph 11 of the Advocates Remuneration Order to challenge the Taxing Master's decision. It was also clear that the Respondent did not oppose the adoption of the taxed costs as the judgment, as they had participated in the taxation proceedings.

Whether the Respondent should pay interest on Costs from the date the Bill was served upon the Respondent until payment in full.

15. I have carefully reviewed the arguments presented by both parties to support their respective positions on this matter. The provision regarding interest on costs is outlined in Paragraph 7 of Part I of the Advocates (Remuneration) Order. It states:

“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”.

16. Further, Section 26 of the [Civil Procedure Act](#) provides that: -

“Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit”.



17. The record indicates that the Advocate/Applicant's Bill of Costs, dated 8th September, 2022, was served to the Client Respondent through a Taxation Notice dated 10th January, 2023. On 12th October, 2023, the Taxing Master assessed the Bill at Kshs.3,500,000/= and issued a Certificate of Taxation on 8th December, 2023.
18. The issue of interest was excluded from the Bill of Costs for the Taxing Master's consideration under Paragraph 7 of the Advocates Remuneration Order. This omission leaves the Applicant's request for costs at the Court's discretion. The courts hold the vital authority to determine when interest accrues, and it is imperative that this discretion is exercised with careful consideration and sound judgment. 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 in the above case tendered an explanation to the effect that the term "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. [Emphasis is mine].
19. It is fair to conclude that in keeping with the holding in *D. Njogu & Company Advocates vs Kenya National Capital Corporation* [2006] eKLR, the Bill of Costs served upon the Client on 10th January, 2023 was effectively disputed, and that is what led to taxation by the taxing master. The Respondent was duly represented on the date of the ruling and was thus certainly aware of the taxed costs in favour of the Applicant. The Bill of Costs has remained unpaid to date. Upon delivery of the ruling on the Bill of Costs and subsequent issuance of the Certificate of Taxation, the Respondent did not contest the decision.
20. Interest on costs should start to accrue from the date the costs were taxed. In the interest of justice and in line with the Advocates (Remuneration) Order, which envisages a thirty-day period before interest can apply, this specific period will begin after 30 days from 12th October, 2023.

Disposition

21. The upshot of this Court's decision is that the Advocate's Notice of Motion application dated 12th March, 2024 is merited and the same is hereby allowed in the following terms: -
 - a. Judgment is hereby entered in favour of the Advocate for the sum of Kshs.3,500,000/= along with interest at a rate of fourteen per cent (14%) per annum. This interest will accrue after 30 days from the date the costs were determined on 12th October, 2023, until the fees are paid in full.
 - b. Costs of this application are awarded to the Advocate, which I hereby assess at Kshs. 10,000/=.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 27TH DAY OF JANUARY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant – Beryl



Advocate for the Applicant – No attendance

Advocates for the Respondent – No attendance

