



**Joe Ngigi & Co Advocates LLP v Kenyan Alliance Insurance Company  
(Application E097 of 2022) [2024] KEHC 789 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 789 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
APPLICATION E097 OF 2022  
GL NZIOKA, J  
JANUARY 31, 2024**

**BETWEEN**

**JOE NGIGI & CO ADVOCATES LLP ..... APPLICANT**

**AND**

**KENYAN ALLIANCE INSURANCE COMPANY ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated 6<sup>th</sup> June 2023, brought under the provisions of; section 51 (2) of the [Advocates Act](#) (Cap 16) Laws of Kenya, the applicant is seeking for the following orders: -
  - a. That judgment be entered in favour of the applicant against the respondent for the sum of Kenya Shillings One Hundred and Nine Thousand Three Hundred and Thirteen (Kshs. 109,313) being the certified costs due to the applicant as against the respondent.
  - b. That the respondent pay to the applicant the cost of this together with interest on the taxed sum.
2. The application is supported by the grounds on the face of it and an affidavit sworn by Joseph N. Ngigi, an Advocate of the High Court of Kenya and the proprietor of the applicant's firm. He deposes that, the respondent instructed the applicant firm to act for it in Naivasha Chief Magistrate's Civil Case No. E001 of 2021; Michelle Imbunya (minor suing through her next friend Linet Aluvoga Lime) vs Stella Kawira Maritta.
3. That after executing the instructions, the respondent failed to pay the legal fees necessitating the filing of the bill of costs that was taxed in the sum of Kshs. 109,313 and a certificate of taxation dated 26<sup>th</sup> May 2023 issued. That, despite demand for payment, the respondent has refused, failed and/or neglected to settle the taxed sum.



4. Further, the certificate of taxation has not been appealed against, set aside, and/or altered. That in the given circumstances it is only fair and just that judgment be entered against the respondent as prayed for together with interest.
5. Upon considering the application, the court ordered that, the same be served for further orders on, 20<sup>th</sup> June 2023. On the material date, none of the parties appeared and the court set the matter for a mention on 28<sup>th</sup> June 2023. However, the same date was declared a public holiday and the matter set for a further mention on 30<sup>th</sup> June, 2023.
6. It is noteworthy that when the matter came up on material date, the court directed that the respondent be served with the application and file its response within fourteen (14) days and then fixed the matter for hearing on the 19<sup>th</sup> September, 2023 and as the court was not sitting it was stood over to 26<sup>th</sup> September. However, on the said date there was no appearance by the parties and the matter was set down for hearing 17<sup>th</sup> October, 2023.
7. On 17<sup>th</sup> October 2023, when the matter was called out, the respondent was not in court, despite having been served as evidenced by an affidavit of service dated; 12<sup>th</sup> October 2023 sworn by Dickson Kariuki, the court process server.
8. As a result of the aforesaid the application is basically unopposed. Be that as it were, I have considered the application in the light of the materials availed in support thereof. I note that the law applicable herein is stipulated under section 51(2) of the [Advocates Act](#), which states as follows: -

“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.”
9. In that regard I note that the applicant has produced evidence of the certificate of taxation issued on; 26<sup>th</sup> May 2023. That, certificate of taxation has not been set aside nor varied and neither is there a dispute on retainer in the respective matter, therefore there is no justification to decline to issue the order for judgment.
10. However, as regards interest, it suffices to note that the provision of section 51 (2) of the [Advocates Act](#) does not provide for interest. But Rule 7 of the [Advocates Remuneration Order](#) provides that:

“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”.
11. It suffices to note that the certificate of taxation was issued on the 26<sup>th</sup> May, 2023. Therefore, the applicant can only get interest from the date of service of the same and/or demand for payment.
12. Consequently, the application is allowed in terms of prayer (1) plus interest from the date of service of certificate of taxation and/or date of demand for payment. The applicant will also have costs of this application.
13. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**GRACE L. NZIOKA**



**JUDGE**

**In the presence of:**

**Miss Mutuku for the applicant**

**N/A for the respondent**

**Ms Ogutu -court assistant**

