



Muri Mwaniki & Wamiti Advocates v Monarch Insurance Co. Limited (Miscellaneous Civil Application 479 of 2018) [2024] KEHC 393 (KLR) (Civ) (26 January 2024) (Ruling)

Neutral citation: [2024] KEHC 393 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 479 OF 2018
JN NJAGI, J
JANUARY 26, 2024

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

MONARCH INSURANCE CO. LIMITED RESPONDENT

(Being an application for entry of judgment of certified costs)

RULING

1. The Applicants herein are a firm of advocates. They have filed an application dated 2nd August 2022 seeking for entry of judgment against the respondent for a sum of Ksh.267,888/= in costs certified by the Deputy Registrar on 26th October 2021. Further that the said sum be paid with interest at the rate of 14% per annum from 20th October 2018, being the date of one month after the service of the bill of costs on the Respondent until payment in full pursuant to Paragraph 7 of the *Advocates (Remuneration) Order*, 2009.
2. The background facts of the matter is that the Applicant acted for the Respondent in Nairobi CMCC No.5900 of 2007 and upon the respondent failing to pay the Applicant's instruction fees, the applicant filed a bill of costs dated 13th September 2018. The bill of costs was taxed by the Deputy Registrar at Ksh.287,888/= vide a ruling delivered on 25th June 2020 and a Certificate of Taxation dated 26th October 2021 was issued. The same was served on the Respondent who did not settle the taxed costs, hence the current application.
3. The Applicant seeks for entry of judgment for the taxed costs and for interest at the rate of 14% per annum from 20/10/2018 being one month from the date of delivery of the bill of costs to the Respondent pursuant to Paragraph 7 of the *Advocates (Remuneration) Order*, 2009.



4. The Respondent opposed the application *vide* grounds of opposition dated 10th June 2023 on the basis that:
 1. The application is filed in flagrant violation of the well-established legal doctrines, Statutory Provisions relevant to the subject application and the same is devoid of merit whatsoever or at all.
 2. The application is fatally defective for want of form and law.
 3. The application has been lodged in bad faith and is thus incompetent.
 4. The application is an abuse of the court process and devoid of any merit.
 5. The application as presented constituted ill occasion miscarriage of justice and great prejudice to the Respondent if allowed.
5. The application and the objection were canvassed by way of written submissions.
6. The Applicant submitted that section 51 of the *Advocates Act* gives the court the discretion to enter judgment on costs taxed and certified where a retainer is not in dispute. In support of this the Applicant cited the case of *Onsongo & Co. Advocates v African Merchant Assurance Company Limited* (2018) eKLR where the court quoted the case of *Musyoka & Wambua Advocates v Rustam Hira Advocates* (2006) eKLR where it was held that:

“Section 51 of *the Act* makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....
7. On interest, the Applicant relied on Paragraph 7 of the *Advocates Remuneration Order* which allows an advocate to charge interest at the rate claimed. They relied on the case of *Otieno Ragot & Company Advocates v National Bank of Kenya* (2022) eKLR where Kamau J. stated that:

.....Rule 7 of the *Advocates Remuneration Rules* was clear that interest was chargeable at fourteen (14%) per cent per annum from the expiration of one (1) month from the delivery of the bill to the client. There was therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired from the time when the bill was delivered to the client.
8. The Applicant submitted that the bill of costs was served on the Respondent on the 20/9/2018 as evidenced by the affidavit of service annexed and marked MGM 1. Therefore, that the allegation of non-service of the bill of costs by the Respondent is without basis.
9. The Applicant submitted that the application was necessitated by failure by the respondent to settle the applicant's fees. Therefore, that the cost of the application should be awarded to the applicant as costs generally follow the event. The applicant urged the court to allow the application as prayed.
10. The Respondent on the other hand submitted that the Applicant is not entitled to interest sought in the application for the reason that the bill annexed to the affidavit of the process server does not bear a stamp indicating that it was received on 13/9/2018. The respondent urged the court not to award the interest claimed in the application.



11. I have considered the grounds in support of the application and the grounds in opposition to the application. The application is made pursuant to the provisions of Section 51(2) of the *Advocates Act* which provides as follows:-

“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.”
12. In this case the bill of costs has been taxed by the taxing officer and it has not been challenged. The retainer is not in dispute. It is trite that a challenge or objection to a decision of the Taxing Master from a taxation under the *Advocates Act* to the High Court should be by way of a Reference. In *Otieno Ragot & Company Advocates vs. Kenya Airports Authority* [2015] eKLR the Court of Appeal stated that:

“Ringera, J (as he then was) in the Matter of Winding Up of Leisure Lodges Limited, Winding Up Cause No. 28 of 1996 expressed the opinion, correctly in our view, that a party aggrieved by a decision of a taxing officer “whether it be on the quantum awarded on the bill as a whole or any items thereof or on the validity of the bill as a whole or any items thereof” has recourse to the High Court by way of reference under Paragraph 11 of the *Advocates (Remuneration)*.”
13. The Respondent has not filed a reference to the taxing master challenging the certificate of costs. I therefore see no reason to deny the Applicant the judgment in the sum claimed.
14. The Respondent has however opposed the interest on the ground that they were not served with the bill of costs. Rule 7 of the *Advocates (Remuneration) Order* provides that:-

“An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”
15. It is thereby lawful for an advocate to charge interest on disbursements and costs. The charge on interest is applicable 30 days after the date of service of the Bill of Costs.
16. The Applicant has supported his application with annexure MGM4 of an affidavit of service sworn by one Elias G. Mwangi on 17/9/2018 whereby the process server avers that he served the respondent with the bill of costs on 20/9/2018 who acknowledged service by stamping their original document. I have however perused the court file and I have not found the stamped document. There is therefore no evidence to show whether the Bill of Costs was served on the 20/9/2018.
17. Be that as it may, the Respondent entered appearance against the bill of costs vide a notice dated 23/11/2018 and thereafter proceeded to oppose the bill. It is then a fact that the Respondent had been served with the bill of costs by the time they entered appearance. They cannot have opposed the bill if it was not served on them. In view of the fact that there is no clear evidence as to the date the Respondent was served with the bill, I will take the date of the notice of appointment, that is, 23/11/2018, as the date of service of the bill of costs and order interest to be charged from that date.
18. The Respondent has not paid the taxed costs in this case. I find that the Applicant has proved that he deserves to be paid interest on the taxed costs at the rate of 14% per annum.



19. The upshot is that the grounds of opposition herein are dismissed. The notice of motion dated 2nd August 2022 succeeds and is allowed in the following terms:
- a. Judgment is hereby entered for the Applicant against the Respondent in the sum of Ksh. 267,888/= in taxed costs.
 - b. Interest shall accrue on the taxed costs at the rate of 14% per annum from 23rd November, 2018 until payment in full.
 - c. The Applicant to have the costs of this application.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JANUARY 2024

J. N. NJAGI

JUDGE

In the presence of:

Miss Wamaitha for Applicant

N/A for Respondent

Parties – Absent

Court Assistant –

30 days right of appeal.

