



**Patrick Otieno - Oyoo t/a Otieno - Oyoo & Company Advocates v
Africa Merchant Assurance Co. Limited (Miscellaneous Application
E065 of 2021) [2024] KEHC 423 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS APPLICATION E065 OF 2021
PN GICHOHI, J
JANUARY 25, 2024
IN THE MATTER OF THE ADVOCATES ACT
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER 2014
BETWEEN
PATRICK OTIENO - OYOO T/A OTIENO - OYOO & COMPANY
ADVOCATES APPLICANT
AND
AFRICA MERCHANT ASSURANCE CO. LIMITED RESPONDENT**

RULING

1. Before this court is a Notice of Motion dated 18th July 2022 brought under Section 51(2) of the [Advocates Act](#) and Section 3A of the [Civil Procedure Act](#). The Applicant seeks orders that:-
 1. This application be consolidated with Kisii H. C. Misc Civil Application No. 66 Of 2021.
 2. The Applicant's costs taxed at Kshs. 197,823.00 be deemed judgement of this court in favour of the applicant against the Respondent.
 3. Costs of the application be provided for.
2. The grounds are on the face of the Application supported by the Affidavit the Affidavit sworn by Patrick Lumumba Otieno – Oyoo on 20th April 2022. He depones that the Applicant's costs herein and in Kisii HC Misc Civil Application No. 66 of 2021 totaling Kshs. 197, 823.00 have been taxed by the court and that the costs have not been reviewed, varied, appealed or set aside.



3. Further, he depones that the retainers in the suits whose Advocate - Client costs have been taxed is not disputed by the Respondent and that the taxed costs remain unpaid and he is now desirous of recovering the unsettled costs by way of execution. It was deposed that filing of suits for recovery of the same would escalate multiplicity of suits and result in unnecessary expenses to both parties and cause wastage of court's time.

Determination

4. The Affidavits of Service on record show that the Respondent was served severally but it did not respond. This Application is therefore unopposed.
5. As regards the prayer for consolidation of the suits is already spent. The proceedings of 24th January 2022 before the Taxing Officer (Hon. D.O. Mac'Andere) show that upon application by Mr. Oyoo (Applicant). The court directed that the orders in Misc. Application No. 65 of 2021 apply in Misc. Application No. 66 of 2021.
6. In regard to filing of suit for recovery of the costs, Section 48 (3) of the [Advocates Act](#) provides that:-

“Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.”
7. In this matter, the Advocate/Applicant filed a Bill of Costs in each of the two Misc. Applications herein. On 18th February, 2022, the Taxing Officer issued a Certificate of Taxation for Kshs. 132, 750/= and Kshs. 65, 073/= in Misc. Civil Application Nos. 65 of 2021 and 66 of 2021 respectively.
8. There has been no dispute as to the retainer. There has been no reference to the ruling on taxation. The two Certificates of Taxation herein have not been set aside or altered by this Court. Section 51 (2) of the [Advocates Act](#) provides that :-

“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.”
9. This has been emphasised by the Courts in several decisions including [Lubullellah & Associates Advocates v NK Brothers Limited](#) [2014] eKLR where the court held :-

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”
10. The Applicant is entitled to interest at the rate of 14% under Paragraph 7 of the [Advocates \(Remuneration\) Order](#) which 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. The Application dated 20th April, 2022 is therefore merited allowed and the Court makes the following orders:-
1. Judgment be and is hereby entered in favour of the Applicant as against the Respondents in the total sum of Ksh. 197,823/= together with interest thereon at fourteen (14%) per cent per annum calculable after Thirty (30) days from the date when this Application was served upon the Respondents until payment in full.
 2. The Applicant is allowed to execute the same as against the Respondents.
 3. Costs of the Application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT KISII (VIRTUAL) THIS 25TH DAY OF JANUARY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

N/A for the Applicant

N/A for the Respondent

Laureen Njiru/ Aphline, Court Assistant

