



B Mbai & Associates Advocates v Invesco Assurance Company Limited (Miscellaneous Application 8 of 2020) [2024] KEHC 2056 (KLR) (Civ) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2056 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION 8 OF 2020
JN NJAGI, J
FEBRUARY 29, 2024**

BETWEEN

B MBAI & ASSOCIATES ADVOACTES APPLICANT

AND

INVESCO ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The Applicant has filed a Notice of Motion dated 30th January, 2022 brought under the provisions of sections 51(1) and (2) of the *Advocates Act*, Cap 16 of the Laws of Kenya seeking for orders that:-
 - i. That judgment be and is hereby entered for the Applicant advocate as against the Respondent for the sum of Kshs. 244,420.64/= being the taxed costs in this matter;
 - ii. That the taxed costs do attract interest at the rate of 14% per annum from the 10th day of December 2019 until payment in full.
 - iii. That Costs of this application be provided for.
2. The application is based on grounds on the face of the application and is supported by an affidavit sworn on January 30, 2022 by Kairu Timothy Waweru, an Advocate of the High Court of Kenya practicing as such with the firm of Mbai Waweru Advocates. Counsel deposed that the Respondent was their client who refused to pay them after their costs were taxed by the Deputy Registrar.
3. The application was opposed by the Respondent vide the replying affidavit of Sylvia Makassy, Counsel on record for the Respondent sworn on 30th January, 2022 wherein she deposed that the bill of costs was never served upon them. Further that the taxing master did not award the Applicant interest at 14% as claimed in the bill of costs. She stated that the application has been overtaken by events though



- she did not explain in what manner. She asked this court to interfere with the decision of the taxing master pursuant to section 51(2) of the *Advocates Act*.
4. I have considered the grounds in support of the application and the grounds in opposition thereto. The bill of costs was taxed on 10th December 2019, at Kshs. 244,420.64/=. Subsequently, a Certificate of Taxation was issued on 21st December 2021. It is not in dispute that the decision by the Taxing Officer has not been set aside and/or altered. Neither is there a reference that has been filed by the Respondent herein against the said decision.
 5. In *Lubullellah & Associates Advocates v NK Brothers Limited* [2014] eKLR the Court stated as follows-

“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.”
 6. In the case of *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co. Ltd* it was stated:

“The procedure provided in section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.”
 7. In view of the fact that the bill has not been challenged through a reference, I do allow the taxed costs of Ksh.244,420.64.
 8. The Applicant has sought for interest at the rate of 14% from the date of taxation until payment in full pursuant to Rule 7 of the Advocates Remuneration Order which states as hereunder-

“An advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.
 9. From the provisions of the above section, an advocate may charge interest of 14% p.a. commencing one month from the date of service of the bill to the client. The Respondent says that the bill was not served on them. Mr. Kairu Waweru does not say when the bill was served on the Respondent. He says in his supporting affidavit that the Certificate of Taxation was forwarded to the Respondent vide a letter dated 3rd February 2022, annexed and marked KTW 1A and 1B. The documents are indicated to have been sent through email but there is no affidavit of service to indicate that they were received by the Respondent.
 10. The Applicant is seeking for interest from the date of taxation which is 21 December 2021. It is not clear on when the bill was served on the Respondent. In the absence of that, I grant interest at the rate claimed from the date the advocate for the Respondent made a reply to the instant application, i.e. on



1st August 2023. This is based on the fact that they must have been served with the bill when they made a reply to the application.

11. In light of the fact that there is no dispute on retainer, no reference has been filed and that the certificate of Taxation has not been set aside, I find the application dated 30th January, 2022 to be merited.
12. The upshot is that judgment is entered in favour of the Applicant as against the Respondent in the sum of Kshs. 244,420.64/= as per the Certificate of Taxation dated 21st December, 2021 together with interest at 14% per annum from 1st August 2023 until payment in full.
13. The Applicant is also awarded costs of the application.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH FEBRUARY 2024

J. N. NJAGI

JUDGE

In the presence of:

Mr. Kamau for Applicant

Miss Gichuki HB for Miss Makasi for Respondent

Court Assistant – Amina

30 days Right of Appeal.

