



Odhambo Owiti & Co Advocates v UAP Insurance Co Limited (Miscellaneous Civil Cause E015 of 2021) [2024] KEHC 2049 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CIVIL CAUSE E015 OF 2021**

DK KEMEL, J

FEBRUARY 29, 2024

BETWEEN

ODHIAMBO OWITI & CO ADVOCATES APPLICANT

AND

UAP INSURANCE CO LIMITED RESPONDENT

RULING

1. The application before me is a notice of motion dated 17th, day of August, 2022 pursuant to section 51 of the Advocates Act Cap 16 Laws of Kenya and rule 7 of the Advocates (Remuneration Order) 2014, seeking the following orders;
 - a. That the certificate of costs dated 29th June, 2022 in respect of the Applicant's Advocate's bill of costs dated 15th February 2021 in the sum Kshs.102,834/ (One hundred and Two thousand eight hundred and thirty-four shillings) to be paid by the Respondent/Client to the applicant/advocate be adopted as judgement and Decree of this Honourable Court.
 - b. That the applicant be awarded interest on the said costs at 14% per annum from 16th February, 2019.
 - c. That cost of this application be granted to the Applicant.
2. The application is supported by the grounds set out on the face thereof as well as the affidavit of Jael A. Onyango sworn on even date as well as a further affidavit of Jael A. Onyango sworn 11th day of September, 2023. The Applicant's gravamen is inter alia; that on or about 5TH October, 2015 the Respondent/Client instructed the Applicant/Advocate to act for it in Bungoma CMCC 481 of 2015 *Joseph Mulati v Said Ahmed, Stephen Biko & Michael Torotich Cheruiyot*; that pursuant to the above instructions, the Applicant/Advocate represented the Respondent/Client in the matter until around 17th August 2018 when judgement was entered in favour of the plaintiff, and that the applicant presented its pro forma invoice for the payment of its professional fees; that the Respondent /Client



having failed to settle the amount due as presented in the final fee note, the Applicant/Advocate filed an Advocate Client Bill of costs dated 15th February, 2021 in the present cause claiming professional fees and refund of the disbursements thereon from the Respondent/client; that the said Bill was taxed by the Court on 16th June 2022 and allowed in the sum of Kshs. 102,834.00 (one hundred and two thousand eight hundred and thirty four shillings) to be paid by the Respondent to the Applicant and a certificate of costs issued thereon on 29th June, 2022; that the said certificate of costs issued has since neither been set aside nor altered by the court; that the Applicant/Advocate is entitled to interest on the costs and disbursements computed in the bill of costs at the rate of 14% per annum from 16th February, 2019, being 30 days from the date of delivery of the Advocate's bill to the client, until payment in full as contemplated in Rule 7 of the *Advocates (Remuneration) Order* 2014.

- .3 The Respondent opposed the application vide a replying affidavit sworn on 15th day of May, 2023 by Cheryl Odipo an officer working at the Legal Claims department of the Respondent wherein she averred inter alia; that the Applicant was retained by the respondent to represent it in Bungoma CMCC No. 481 of 2015 *Joseph Mulati v Said Ahmed & 2 Others* and that the Applicant did in fact represent the respondent in the said suit and that there is no dispute regarding the same; that the Applicant filed an Advocate/Client's bill of costs dated 15th February, 2021 and which was taxed on 16th 2022 in the sum of Kenya shillings One hundred and Two thousand Eight Hundred and thirty Four only Kshs.102, 834.00.;that on or about the 29th day of June, 2022 vide payment ref ACCXXXX57 payment was remitted to the Applicant's account No. 00XXXX77 with regard to the assessed and taxed amount in the sum of Kenya shillings one Hundred and Two Thousand eight Hundred and Thirty Four only Kshs.102,834.00/-; that in light of the foregoing , the adoption of the certificate of costs issued in relation to the bill of costs dated 15th February 2021 and taxed in the sum of Kenya shillings one hundred and two thousand eight hundred and thirty Four only Kshs. 102,834.00/- as judgement and decree of the court is opposed; that the applicant's claim for interest on the taxed costs at 14% from the date of delivery of the proforma invoice and or bill to the client all payment in full as contemplated in rule 7 of the amended advocates Remuneration rules is opposed; that the costs sought herein as taxed in the certificate of costs have already been settled and that the orders sought herein should not be granted to the applicant; that the applicant's application is an afterthought, frivolous , misconceived , incompetent and is abuse of the court process and is only intended to unnecessarily increase costs and thus it does not meet the threshold for grant of the orders sought.
4. The application was canvassed by way of written submissions. The Respondent filed its submissions dated 19.10.2023 while the Applicant opted to rely on its affidavits in support of the application.
5. I have duly considered the rival affidavits as well as the submissions presented. It is not in dispute that the Applicant's Advocate/Client's bill of costs dated 15.2.2021 was taxed at Kshs 102, 834/ vide the certificate of taxation dated 29.6.2022. It is also not in dispute that the said sums were duly paid by the Respondent on 29.6.2022 to the Applicant. It is also not in dispute that the Applicant did not include a claim for interest in his bill of costs dated 15.2.2021 and that the taxing master did not capture the same in his ruling dated 16.6.2022 or vide the certificate of taxation dated 29.6.2022. It is also not in dispute that the Applicant did not indicate that it had received the taxed costs on a without prejudice basis so as to entitle it a right to agitate over the same as herein. That being the position, I find the only issue for determination is whether the application has merit.
6. It is noted that the application seeks that the certificate of costs dated 29.6.2022 be adopted as a judgement and decree of this court. Indeed, once a certificate is issued by the taxing officer, parties are entitled to seek for the adoption of the same as a judgement of the court for purposes of extracting an order or decree for execution purposes. Hence the Applicant's prayer to that extent has merit. The objection by the Respondent against the adoption is without basis as the taxation processes must



proceed up to conclusion and for record purposes regardless of whether the costs have been settled. This is in keeping with the principle of finality in litigation.

7. As regards the issue of interest on the taxed costs, it is noted that under Rule 7 of the *Advocates (Remuneration) Order*, an advocate may charge interest at 14% per annum on his disbursements and costs whether by scale or otherwise upon expiry of one month from the delivery of his bill to the client provided that such a claim is raised before the amount of the bill has been paid or tendered in full. It is instructive that the Applicant's bill of costs dated 15.2.2021 did not include the claim for interest of 14% per annum as from 16.2.2019 and likewise the Applicant's proforma fee note was silent on the same. It is also instructive that the Applicant's proforma fee note was almost similar to what was later taxed by the taxing officer and that the proforma fee note did not allude to any claim for interest. I have perused the taxing officer's ruling dated 16.6.2022 and note that he considered all the items and came up with a sum almost equal to what the Applicant had already billed the Respondent. I have no reason to disturb the taxing officer's decision since he had exercised his discretion. In the case of *Kipkorir, Tito & Kiara Adorates v Deposit Protection Fund Board* [2005] eKLR, it was held that a judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer erred in principle in assessing the costs. The taxing officer merely taxed on the items contained in the Applicant's bill of costs dated 15.2.2021. It is also instructive that the Applicant herein has not challenged the taxed costs and thus the application is not a reference per se. As the Respondent paid the sums taxed, then the claim for interest by the Applicant under rule 7 of the *Advocates (Remuneration) Order* has already been overtaken by events. Indeed, the Respondent pulled a fast one on the Applicant when it immediately paid up the taxed costs as soon as the taxing officer issued the certificate of taxation. In the circumstances, I find the claim for interest having been made late in the day is without any merit. The same must be rejected. It is my considered view that the Applicant is stretching its luck a little bit too far despite having been paid the taxed sums. As long as the Applicant had not sent a demand for interest prior to the amount of the bill had been paid or tendered in full, then the claim for interest is overtaken by events in that the taxed costs were paid immediately the certificate was issued. The Applicant must contend with the amounts so far paid by the Respondent.
8. In view of the foregoing observations, the Applicant's application succeeds only in terms of prayer No.1. Each party to bear their own costs.

DATED AND DELIVERED AT BUNGOMA THIS 29TH DAY OF FEBRUARY 2024

D.KEMEI

JUDGE

In the presence of :-

Jael Onyango for Advocate/Applicant

Okwemba for Respondent/Client

Kizito Court Assistant

