



REPUBLIC OF KENYA



Menezes & Partners Advocates v APA Insurance Limited (Miscellaneous Civil Application E006 of 2022) [2024] KEHC 2192 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CIVIL APPLICATION E006 OF 2022
AK NDUNG’U, J
FEBRUARY 28, 2024**

BETWEEN

MENEZES & PARTNERS ADVOCATES APPLICANT

AND

APA INSURANCE LIMITED RESPONDENT

RULING

1. This ruling resolves the notice of motion dated November 14, 2023 seeking orders;
 - i. That the judgment be entered for the sum of Kes 143,418.40/- being the applicant/advocates taxed and certified costs in Nyahururu HC. Misc. No. E006 of 2022.
 - ii. That the Applicant be awarded interest at the rate of 14% per annum, from the 1st day of May, 2022.
 - iii. That the decree is issued forthwith.
 - iv. That the honourable court be pleased to issue such orders and give such directions as it may consider appropriate to meet the ends of justice.
 - v. That the respondent be condemned to pay the applicant’s costs of this application.
2. The application is supported by the affidavit of Pauline W. Kamunya dated November 14, 2023, and on the following grounds;
 - a. That on the 9th day of March, 2022, the Applicant/Advocates filed an advocate/client bill of costs dated the 21st day of February, 2022.
 - b. That the respondent was duly served with the same on the 1st day of April, 2022, but the respondent failed to defend and/or object to the said bill of costs.



- c. That on the 27th day of May, 2022 the said advocate/client Bill of costs was subsequently taxed for the sum of Kes 143,418.40/- and a Certificate of Taxation accordingly issued on the 8th day of November, 2022. To date the said certificate of taxation has not been appeal, stayed and/or set aside.
 - d. That I know *vide* the letter dated January 20, 2022 duly received by the respondent on the 21st day of January, 2022, they were informed of the applicant/advocates claim of interest in respect of the sums due. It is thus fair and just that interest be accordingly awarded at the rate of 14% per annum, from the 1st day of May, 2022, being the expiration of one month from the day when he said bill of costs was served upon the Respondent, as provided for at part 1 rule 7 of the [Advocates Remuneration Order](#) and Rules.
 - e. That as a consequence of the respondent's failure to promptly and fully settle the sums due to the applicant/advocates for services rendered, the applicant/advocates have consequently been denied use of the said sums, therefore it is reasonable and proper that the instant application be allowed as prayed and a decree accordingly issued forthwith.
3. The gist of the application is that the advocate/client bill of costs was taxed for the sum of Kes 143,418.40/- and a certificate of taxation accordingly issued on the 8th day of November, 2022. To date the said certificate of taxation has not been appealed, stayed and/or set aside.
 4. It is urged that a letter dated January 20, 2022 was duly received by the respondent on the 21st day of January, 2022, whereby they were informed of the applicant/advocates claim of interest in respect of the sums due. It is thus fair and just that interest be accordingly awarded at the rate of 14% per annum, from the 1st day of May, 2022, being the expiration of one month from the day when the said bill of costs was served upon the respondent, as provided for at part 1 rule 7 of the [Advocates Remuneration Order](#) and Rules.
 5. Since as a consequence of the respondent's failure to promptly and fully settle the sums due to the applicant/advocates for services rendered, the applicant/advocates have consequently been denied use of the said sums, it is reasonable and proper that the instant application be allowed as prayed and a decree accordingly issued forthwith. The application was not opposed despite there being affidavit of service.
 6. I have considered the application, the supporting grounds and affidavit. I have had due regard to the submissions by the applicant. The only question for determination is whether the court should enter judgment as prayed by the advocate/applicant with interest at 14% per annum from the date of service of the bill of costs until payment in full.
 7. The material before court clearly shows that the certificate of taxation issued in this matter has not been challenged as provided for under the [Advocates Remuneration Order](#). The application for entry of judgment is thus merited and is successful. I enter judgement in favour of the Advocate for the sum of Kes 143,418.40/- as prayed.
 8. As regards whether interest is payable as sought, the decision by the court of appeal in [Otieno Ragot & Co Advocates v Kenya Airports Authority](#) [2021] eKLR, illuminates the issue. The court stated: -

“The rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursement and costs following submissions of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one (1) month from the date of delivery of the bill or fee note. The learned judge's reasoning that the rule does not specify the date from



which time begins to run was therefore a misdirection..... Additionally, it is distinctive that a review of the applicant's Bill of Costs does not disclose that the applicant included a charge for '...interest at 14% per annum on his (her) disbursements and costs...' in the Bill of Costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the *Civil Procedure Act*."

9. I have looked at the bill of costs that was drawn, filed and presented by the advocate/applicant in this matter. The advocate included a charge of interest at 14% per annum which he now claims in this application. Guided by the above cited binding authority, the claim for interest stands on solid ground and is legally sound.
10. Accordingly, judgment is entered in favour of the advocate/applicant for the sum of Kes 143,418.40/- with interest at 14% per annum from the 1st day of May 2022 till payment in full. The applicant shall have the costs of this application.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 28TH DAY OF FEBRUARY 2024

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A.K. NDUNG'U

JUDGE

