



REPUBLIC OF KENYA



KENYA LAW
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Kitonga & Co Advocates v Africa Merchant Assurance Limited (Miscellaneous Application 182 of 2019) [2024] KEHC 3595 (KLR) (22 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3595 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION 182 OF 2019**

A MSHILA, J

MARCH 22, 2024

BETWEEN

KITONGA & CO ADVOCATES APPLICANT

AND

AFRICA MERCHANT ASSURANCE LIMITED RESPONDENT

RULING

1. Before court is the Notice of Motion dated 9th November, 2023 and brought under Section 51(2) of the [Advocates Act](#) Cap.16 Laws of Kenya and Sections 1A, 1B, 34 and 63€ of the [Civil Procedure Act](#) and Order 51 Rule 1 of the [Civil Procedure Code](#) and other enabling provisions of the law. The Applicant sought for the following orders:-
 - a. That the Honourable Court be pleased to enter Judgment against the Respondent/Client for the sum of Kshs. 105.861/- in terms of the Certificate of Costs dated 19th November, 2019 together with costs and interest thereon at court rates from the date of taxation till payment in full.
 - b. That a decree be issued in respect of the Certificate of Taxation dated 19th November, 2019 and the Applicant be at liberty to execute for recovery of the same in such manner as a decree of this Honourable Court.
 - c. That the Respondent/Client pays costs of the application.
2. The application is premised on the grounds on the face of the application and the Supporting Affidavit of Mathew K.itonga dated 16th November, 2023 made in support of the application; therein he states that the Respondent instructed the firm of K.itonga & Company Advocates to act for its insured in Thika CMCC NO. 988 of 2012 Mary Wanjiku Wainaina Vs Harison Kariuki Mbita & Seleiman Zahra.



3. The Applicant rendered legal services on behalf of the Respondent in the above-mentioned matter and the Respondent failed to pay the legal fees due and arising thereby necessitating the filing of the Bill of Costs dated 6/05/2019 and a ruling was delivered on 1/11/2019; a Certificate of Taxation dated 19/11/2019 was issued which taxed costs the Respondent has failed and/or neglected to settle.
4. The instant application was uncontested as the Respondent failed and or neglected to file any response despite service having been effected.
5. The Applicant prayed that judgment be entered as prayed for the sum of 105,861/- together with interest thereon. The Applicant also prayed for costs of the application.

Issues For Determination

6. Having considered the application and the supporting affidavit the issues framed for determination are;
 - i. Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of 105,861/- and;
 - ii. Whether interest at 14% per annum is applicable thereon.

Analysis

Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of 105,861/-

7. Section 51(2) of the *Advocates Act* provides:-

“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 recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs.”
8. The wordings of the above section empower the court to enter judgment on the taxed amount if the same is uncontested.
9. In determining whether the court should adopt the amount on the Certificate of Taxation dated 19/11/2019 as the judgment of the court it should be satisfied that the Certificate of Taxation has not been set aside.
10. Reference is made to the case of *Lubullellah & Associates Advocates Vs N. K. Brothers Limited* (2014) eKLR where the court observed that:-

“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.”
11. From perusal of the court record this court is satisfied that the Ruling is uncontested as the Respondent has not moved any court by way of filing a Reference against the ruling nor has the Ruling been set aside, altered, varied and / or reviewed, nor has any appeal been filed.



12. Therefore, no other action is required from this court save to adopt the Certificate of Taxation as an order of this court and to enter judgment as prayed against the Respondent.

Whether interest at 14% per annum is applicable thereon and payable

13. In the supporting affidavit the Applicant makes no mention of when it served its Fee Note for settlement of the legal fees; that notwithstanding it is apparent that the legal fees was not settled thus necessitating the filing of the Bill of Costs dated 20/03/2019; the Bill of Costs was served upon the Respondent together with the Taxation Notice on the 30/05/2019. The Applicant seeks the court to grant interest on the taxed costs but it did not demonstrate when a demand letter or notice was issued with the claim for interest specified therein.

14. 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. The above rule stipulates that such claim for interest must be raised for it to start to accrue after the expiration of one month from the delivery of its Bill to the client.

16. In the case of *Kerongo & Company Advocates Vs Africa Assurance Merchant Co. Limited* [2019] eKLR the court held;

‘An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the *Advocates Remuneration Order*. As the advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum.’

17. The record reflects that the Respondent was served on 30/05/2019 with the Notice for Taxation dated 20/05/2019 which was accompanied with the Bill of Costs; After careful perusal of the court record nowhere has the Applicant demonstrated or proved that it raised a claim for interest either in the form of a demand or in the Fee Note to the Respondent;

18. Therefore, in line with Rule 7, the Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent; this court is satisfied that the prayer for interest to start accruing on the taxed costs is found to be devoid of merit and is therefore disallowed.

Findings & Determination

19. For the forgoing reasons this court makes the following findings and determinations:-

- i. This court finds the application to be partially meritorious and it is hereby partially allowed;
- ii. The Certificate of Taxation dated 19th November, 2019 in the sum of 105,861/- is hereby adopted as an order of this court. Judgment be and is hereby entered in favour of the Applicant in the sum of Kshs.105,861/-;
- iii. The prayer for interest on (ii) above is found to be devoid of merit and it is hereby disallowed.



- iv. A decree be issued in respect of the Certificate of Taxation dated 19th November, 2019 and the Applicant be at liberty to execute for recovery of the same
- v. Each party to bear its own costs of this application.

Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 22ND DAY OF MARCH, 2024.

HON. A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Nyatera - for Applicant

