



**C. M. Thuku & Company Advocates v Nairobi Upperhill  
Hotel Limited (Civil Miscellaneous Application E198 of 2022)  
[2024] KEHC 3861 (KLR) (Commercial and Tax) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3861 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL MISCELLANEOUS APPLICATION E198 OF 2022  
JWW MONG'ARE, J  
APRIL 22, 2024**

**BETWEEN**

**C. M. THUKU & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**NAIROBI UPPERHILL HOTEL LIMITED ..... CLIENT**

**RULING**

1. By an application dated 14<sup>th</sup> March 2022, the Advocate/Applicant has moved this Honourable Court under Order 51 Rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Section 51 of the *Advocates Act*, Rule 7 of the *Advocates Remuneration order* and Article 40 of the *Constitution* of Kenya, seeking the following orders:-
  1. That the certificate of taxation herein dated 3<sup>rd</sup> March 2022 be adopted as a judgment of this Honourable Court.
  2. That the resultant judgment and decree does attract of 14% from the 10<sup>th</sup> Day of March 2020 until payment in full.
  3. That the costs of this Application be provided for.
2. The application is premised on the grounds set on its face and the supporting affidavit of Charles M. Thuku Advocate, the Applicant herein. The Respondent has opposed the application through a Replying affidavit sworn on 12<sup>th</sup> July 2022 by Wahome Muotia, a director of the Respondent.
3. The taxed costs arises out of a Bill of Costs filed by the Advocate for recovery of fees for legal services offered to the Respondent/Client in Nairobi Civil Appeal No. 24 of 2018-Nairobi Upper Hill Limited Vs Jovan H. Kariuki T/a Moran Auctioneers before the High Court. Subsequently, the Advocate filed



its Bill of Costs and the same was taxed and on 3<sup>rd</sup> March 2022 the taxing master issued a Certificate of Costs for the sum of Kshs.623,515.09/=. It is this certificate that the Advocate/Applicant wishes to have the court adopt as a judgment of this court and allow the extraction of decree for purposes of execution.

4. In opposing the application, the Respondent argues that it wished to oppose the Bill of Costs but due to laxity on the part of their legal counsel, the relevant application was not filed timely and that it was its intention to move the court for leave to do so.

### **Analysis And Determination**

5. I have carefully considered the application and the rival affidavits in support and opposition to the application. To my mind two issues arise for determination, to wit:-

- i. Whether the Certificate of Costs should be adopted as a judgment of the court.
- ii. Whether the court should award interest on resultant judgment and decree from 10/3/2020 at 14%.

6. Section 51(2) of the *Advocates Act*, provides that:-

“the certificate of the taxing officer by whom any bill has been taxed, shall, unless 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.”

The court has power under paragraph 11 of the *Advocates Remuneration* to allow a party objecting to the decision of a taxing master to file a reference in the High Court seeking to set aside the taxed bill and refer the bill back for retaxing, among other orders. Having carefully analyzed the application and the pleadings filed before this court, I note that save for the Replying affidavit filed by the director of the Respondent, Wahome Muotia, on 12<sup>th</sup> July 2022, the Respondent did not file a reference to challenge the taxed bill or make any other move thereto. The Respondent appears to blame the inaction of its counsel for that failure, which is not a matter for consideration before the court.

7. From a perusal of the record, the Respondent had numerous opportunities to challenge the bill if it was so minded, as this matter was mentioned several times before being finally heard. In the premises therefore, this court is duty bound to allow the prayers sought for the adoption of the Certificate of Taxation dated 3<sup>rd</sup> April 2022 as a judgment of this court. Accordingly, I find and hold that limb of the application successful and allow the prayers sought.
8. The second issue that this court is called to consider is “whether the court should award interest on resultant judgment and decree from 10/3/2020 at 14%.” The second limb of the application is for interest at 14% on the resultant judgment and decree of this court.
9. Paragraph 7 of the *Advocates (Remuneration) Order* states that:-

“an Advocate may charge interest at 14% 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 interest is raised before the amount of the bill shall have been paid and tendered in full.”



In the application herein, the Applicant is seeking to have the interest applicable charged on the bill from 10<sup>th</sup> March 2020. The Applicant has urged the court to be guided by the decision of the Court of Appeal in the case of Otieno Ragot & Company Advocates v Kenya Airports Authority (2015)eKLR.

10. It is instructive to note that before the 3<sup>rd</sup> March 2022 there was pending before the taxing master a bill of costs, being the Advocate-Client bill for taxation. To my mind, up to that period, there was no bill delivered for payment to the Advocate by the Client as the same was pending assessment by the taxing master. It is therefore correct, in my view, to presume that the obligation upon the Client to settle this bill only vested once there was a duly taxed bill and a Certificate of Taxation, once adopted by the court as a judgment of the court remained unsettled for a period exceeding one month for the right to charge interest to accrue. To my mind, it would be therefore punitive to order a charge of interest on the unpaid bill from 10<sup>th</sup> March 2020 when the bill was still pending before the taxing master for consideration and as such, the prayers sought herein are premature, as they can only vest once there is a judgment and a resultant decree emanating from the Certificate of Taxation.
11. The court has now adopted the taxed costs as a judgment of this court. This delivery of judgment is sufficient notice to the Respondent that it has an obligation to settle the fees due to the Advocate, failure to which the Advocate may commence execution proceedings. Now that the court has completed the process of converting the Certificate of Taxation to a judgment capable of being executed, the court is agreeable that the Advocate is entitled to interest upon expiry of the 30 days from the date of delivery of this judgment. Subsequently, I find and hold that the interest shall become applicable and chargeable at the rate of 14% upon expiry of 30 days from the date of this judgment, if the same remains outstanding.
12. Costs follow the event. The Applicant has been successful on the first limb of the application. I find that the Applicant is deserving of costs of this application and order that the same be paid by the Client/ Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL, 2024**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

Mr. Thuku for the Advocate/Applicant.

Ms. Ivy Mouti for the Respondent/Client.

Amos - Court Assistant

