



Mohamed & Samnakay v Aga Khan Hospital (Miscellaneous Case 538 of 2018) [2024] KEHC 10710 (KLR) (Civ) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 10710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CASE 538 OF 2018**

JN MULWA, J

JUNE 27, 2024

BETWEEN

MOHAMED & SAMNAKAY APPLICANT

AND

THE AGA KHAN HOSPITAL RESPONDENT

RULING

1. The court delivered a ruling on 1/12/2022 on the Notice of Motion Application dated 12/04/2023 brought by the Applicant Mohamed & Samnakay Advocates on motion dated 28/04/2022 as well as the Respondent's/Client preliminary objection dated 8/07/2022 both in respect to costs and interests awarded to the Advocates in an Advocate-Client Bill of costs dated 23/4/2021.
2. Upon consideration of the motions, the court made the following orders:-
 - a. Notice of Motion dated 12/04/2022 is allowed in terms of prayers (1) and (2).
 - b. Notice of motion dated 26/04/2022 is allowed in terms of prayer no. 2
 - c. The Respondent's Notice of Preliminary objection dated 8/07/2022 is dismissed.
 - d. Each party shall bear own costs of the two Applications and the Notice of preliminary objection.
3. Upon the above ruling, the deputy Registrar of the court drew a decree in the following terms:-

Applicant's Claim

 - a. Kshs. 38,562.50 being costs certified on 5/04/2022.



- b. Interest on the sum of Kshs. 38,562.50 at the rate of 14% per annum from 25/05/2021 until payment in full.
- c. Costs of the Application assessed at Kshs. 30,000/=

Respondent's Claim

- a. A declaration that the Certificate of Taxation dated 5/04/2022 has been fully settled.
- b. Kshs. 29,410/= being the amount paid in excess of the taxed costs.
- c. Costs of the application.

It Is Hereby Ordered And Decreed

1. Judgment be and is hereby entered for the Applicant/Advocate against the Respondent/Client in the sum of Kshs. 38,562.50 together with interest at the rate of 14% per annum from 25/05/2021 until payment in full.
 2. That judgment in the sum of Kshs. 38,562.50 in (1) above be set off against the sum of Kshs. 67,972.50 received by the Applicant/Advocate from the Respondent/Client.
 3. That the Applicant/Advocate do refund to the Respondent client the sum of Kshs. 29,410/- being the amount in excess of the judgment sum of Kshs. 38,562.50 in (1) above.
 4. Each party to bear own costs.
4. It is upon the above decree by the Deputy Registrar that the parties state to be erroneous calculations and seek the court's harmonization of the accounts.
 5. By an Application dated 26/04/2022 the Client Aga Khan Hospital seeks orders that the certificate of Taxation dated 5/04/2022 be deemed to have been fully settled and for an order to compel the respondent to refund Kshs. 29,410/=to the applicant being an overpayment to the advocates by the client.
 6. The grounds for the application are stated at its face and supported by an affidavit sworn on 26/04/2022 by Bernard Chenge Advocate for the Applicant/Client.
 7. Order 21 Rule 4 of the *Civil Procedure Rules* (CPR) provides:-

“On any disagreement with the draft decree any party may file the draft decree marked as “for settlement” and the registrar shall thereupon list the same in chambers before the judge who heard the case, or, if he is not available before any other judge and give notice thereof to the parties”.
 8. A “draft decree” was drawn by the Deputy Registrar, which neither party approved. Pursuant to Order 21 Rule 4, *CPR* the disagreement has been brought to the court for settlement by harmonization of the account.

It is produced at paragraph 3 above.



Analysis And Determination

9. The first issue to determine is whether a sum of Kshs. 29,410/= was paid by the client to the Advocates prior to the ruling of the court dated 1/12/2022 and if so, whether the said sum ought to be refunded or offset from the sum of Kshs. 38,562.50 found due to the Advocate from the client.
10. The advocate by its affidavit sworn on 22/08/2023 paragraph 4 it is evident that the Advocate admits having received a sum of Kshs. 29,000/= leaving a balance of Kshs. 9,152/= but loads interest on the amount from 26/05/2021 to 26/09/2023.
11. On the other hand, the client exhibits -“2, 3 & 4-” in its Supporting Affidavit shows that the sum of Kshs. 29,410 was paid to the Advocate before filing of the Advocate/ Client bill of costs meaning, in my view if that be so which I hold to be true, that that amount to have been factored as paid before filing the bill of costs, and not to have been loaded with interest.
12. By a letter addressed to Ms. Chenge Busiku & Co. Advocates dated 13/12/2022 by the Advocates, the sum of Kshs. 38,562.50 is admitted as having been owing. On the amount, interest of Kshs. 8,519.50 is loaded to make-to-make Kshs. 47,082/-.

The Advocate then deducts the amount of Kshs. 29,410/= meaning an admission of payment of the said sum. By the above said sum of Kshs. 29,410/= ought to be paid back to the client, as per the impugned ruling and interest on the same should not have been loaded as it was paid before the Bill of costs was drawn which was in my view an error/mistake on the part of the Advocate.

13. By a letter dated 15/12/2022 the Advocate concurred with the court but failed to reduce the interest loaded on the sum of Kshs. 29,410/=
14. I therefore agree with the client that the Deputy Registrar erred in loading interest on the sum of Kshs. 29,410/= which the Advocate is required to refund to the client – see para. 20, 12 and 23 (3) of the ruling dated 1/12/2022.
15. It is clear from the court ruling at the above paragraphs that the advocates Mohamed and Samnakay owes the client- the Agakhan Hospital Kshs. 29,410/= that the court held should be refunded, without interest as none was awarded.

The above is the harmonization that this court has offered.

16. Consequently, the Deputy Registrar may draw a Decree if necessary, and factor that the sum of Kshs. 29,410/= should be deducted from the sum of Kshs. 38,562.50 that the court found due and owing to the client from the Advocate, leaving a balance of Kshs. 9,152/= to the Advocates/Applicant which sum should then be subjected to interest at 14% from 26/05/2021.

Orders accordingly.

DATED SIGNED AND DELIVERED IN NAIROBI THIS 27TH DAY OF JUNE, 2024.

JANET MULWA

JUDGE

