



**Njogu and Ngugi Advocates v Thara (Miscellaneous Application  
E131 of 2021) [2024] KEHC 9775 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9775 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
MISCELLANEOUS APPLICATION E131 OF 2021**

**SN RIECHI, J**

**JULY 31, 2024**

**BETWEEN**

**NJOGU AND NGUGI ADVOCATES ..... APPLICANT**

**AND**

**TERESA NYAMBURA THARA ..... RESPONDENT**

**RULING**

1. By a consent of parties and court direction the only issue remaining for determination before this court is third prayer of the Application dated 1<sup>st</sup> March 2022 the Applicant seeks for orders that;
  1. That the Applicant/Advocate be awarded interest at the rate of 16% per annum from the 29<sup>th</sup> May 202 being the 30<sup>th</sup> day on which the Bill of costs was served upon the respondent as provided for in part 1(7) of the Advocates' Act and Advocates Remuneration Order and Rules and;
  2. An award on costs of the said application. The decision of the taxing master given on 18<sup>th</sup> February 2022 be set aside.
  3. That the Bill of costs dated 9<sup>th</sup> July 2021 be taxed before a different taxing master or the taxing master be order to review the ruling on taxing made on 18<sup>th</sup> February 2022 in relation to instruction fees.
  4. Costs be provided for.
2. The Application is premised on the grounds set out on the face of the Application and on the Supporting Affidavit sworn on even date.
3. The applicant briefly deponed that the Respondent/Client having been served with the Certificate of Taxation, made a unilateral decision to pay the decretal amount in installments. The applicant stated there was no court order for payment on the amount in instalments and neither was there a



request, discussions or agreement between the Applicant/Advocate and Respondent/Client for such instalment payments. The applicant stated it is therefore very presumptuous and condescending of the Respondent/Client to unilaterally decide to settle the amount owed in her own terms, and even more presumptuous and condescending to decide that she can deny the Applicant/Advocate interest, which is lawfully due. The applicant stated that they are entitled to interest.

4. The respondent opposed the application through her replying affidavit sworn on 20<sup>th</sup> April, 2022. The respondent stated that she has no objection, in principal, to the claim for entry of judgment for the Taxed amount of KShs. 2,135,957/- subject to the court giving credit to a sum of KShs. 1,050,000/- already paid to the Advocate/Applicant by the time of filing these submissions. Consequently, the court should enter judgement for the sum of KShs. 1,085,957/-. The respondent deposed that she objects to the Advocate/Applicant's claim for interest.
5. By consent of parties, the issue of interest was canvassed by way of written submissions. The parties filed therein respective submissions which I have analyzed and considered and case law in support.
6. The applicant briefly submitted that the position of the law regarding the question of interest payable to an advocate on taxed costs has been set out under Rule 7 of the Advocates Remuneration Order. The applicant submitted that the period contemplated by Rule 7 has long since passed and the Applicant/Advocate is therefore entitled to interest. The applicant placed reliance on the decision in [\*Jackson Omwenga & Co Advocates vs Everest Enterprises Limited \[2017\]\*](#) eKLR. The Applicant /Advocate submitted that she is entitled to interest and there is no legal justification for her to be denied the interest .
7. The respondent briefly submitted that the relevant statutory provision on interest chargeable on an Advocate's bill is rule 7 of the Advocates Remuneration Order.
8. The respondent submitted that from the rule an advocate may charge an interest rate of 14% on his bill, secondly If the advocate opts to charge interest, it begins to accrue upon expiration of one month from delivery of his bill to the client and the claim for interest should be raised prior to the amount of the bill having been paid in full.
9. The Respondent submits that the Advocate/Applicant failed to comply with the aforesaid rule. She submitted this is because the Advocate never communicated to her client that she would charge any interest on her bill prior to filing for taxation by the Taxing Master. The respondent submitted that the Applicant has failed to demonstrate that she made a claim for interest before filing the bill of costs or at all therefore she is not entitled to any interest especially on the full taxed amount. The respondent relied on the decision in [\*Tom Ojienda & Associates v Nairobi City County \(Miscellaneous Application E620 of 2019\)\*](#) (2022) KEHC 86 (KLR)
10. From the application, response and submissions the main issue for determination is whether the applicant is entitled to interest on the Bill of costs as filed.
11. Rule 7 of the Advocates Remuneration Order which provides as follows:

An advocate may charge interest at 14 per cent per annum 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 claim for interest is raised before the amount of the bill shall have been paid or tendered in full"
12. It is important to note that Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at fourteen (14%) per cent per annum until payment in full.



13. Having carefully considered the respective parties' Written Submissions, it is clear that the Client has opposed adoption of the taxed costs. What she objected to was the interest to be paid.
14. Notably, several courts have held that the court has the discretion to determine when interest ought to run. In *D. Njogu & Company Advocates vs Kenya National Capital Corporation [2006]* eKLR, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that the "correct fee note" meant a bill that was in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client did not dispute, or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.
15. This court took respectful view that Rule 7 of the Advocates Remuneration Rules is clear that interest is chargeable at fourteen (14%) per cent per annum, from the expiration of one month from the delivery of the bill to the client. There was therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
16. Going further, interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served. Rule 7 of the Advocates Remuneration Rules provides that interest is only chargeable provided that such claim for interest was raised before the amount of the bill was tendered in full.
17. In this instant case I note that the respondent has settled the taxed costs in installment but not in full, there is still an outstanding amount that the respondent is yet to settle. The Bill of Costs therefore remain unsettled unpaid to date. The claim for payment of fourteen (14%) per cent per annum was raised in the present application and as the certified costs had not been paid in full, the same was payable.
118. The upshot of this court's decision the applicant is entitled to an interest thereon at fourteen (14%) per cent per annum.

**DATED AT NAIROBI THIS 31ST JULY, 2024.**

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**S. N. RIECHI**  
**JUDGE**

