



**Zadok Furniture Systems Limited v Lubulellah & Associates
Advocates (Miscellaneous Civil Application E071 of 2021)
[2022] KEHC 15997 (KLR) (Commercial and Tax) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E071 OF 2021
A MSHILA, J
NOVEMBER 25, 2022**

BETWEEN

ZADOK FURNITURE SYSTEMS LIMITED APPLICANT

AND

LUBULELLAH & ASSOCIATES ADVOCATES RESPONDENT

RULING

Background

1. Before the Court are two Applications to be canvassed together. The 1st Application is a Chamber Summons dated February 7, 2022 was brought under Paragraph 11(2) of the [*Advocates Remuneration Order*](#) for orders that;
 - a. The decision/Ruling of the Taxing Officer delivered on January 14, 2022 on the Respondent's Advocate-Client of Costs dated January 29, 2021 be set aside and/or reviewed as it relates to the reasoning and determination pertaining item numbers 1, 2, 3, 4, 5, 9, 10, 13, 16, 18, 22, 23, 25, 28, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 65, and 69 on the Applicant's Bill of Costs.
 - b. The Court to re-assess the instruction fees due to the Advocate/Respondent in respect of item No 1 of the Advocate-Client Bill of Costs dated January 29, 2021 and make a fresh finding on the same.
 - c. In the alternative and without prejudice to the foregoing, the Court to remit the Advocate-Client Bill of Costs dated January 29, 2021 for review and reconsideration by the Taxing Officer with appropriate directions in respect of items 1, 2, 3, 4, 5, 9, 10, 13, 16, 18, 22, 23, 25, 28, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 65, and 69 thereof.



- d. The Court to adjust the figures and re-assess the costs due to the Advocate/Respondent in the taxation cause as is presented in the Client/Applicant's submissions dated and filed on October 29, 2021.
 - e. The costs of this Application be provided for.
2. The Application was supported by the sworn Affidavit of Abdirizak Roba who stated that that the Client had already paid to the Advocate and proved by documentary evidence.
 3. The Respondent's Advocate-Client Bill of Costs dated January 29, 2021 arose from instructions to act for and defend the Client in an application seeking the stay and setting aside of the Arbitral Award of Kshs 118, 135, 283.56. In the said Bill of Costs, the Advocate sought a total of Kshs 18, 829, 491.18 from the Client herein.
 4. The Taxing Officer considered the Bill of Costs together with responses and submissions from the Applicant herein and delivered a Ruling on January 14, 2022 in which she taxed the said Bill at Kshs 10, 884, 140.01.
 5. The Taxing Officer acted contrary to well-settled principles of law and also misdirected herself on the applicable principles of law.
 6. The Taxing Officer abused her discretion by awarding the Advocate Respondent herein both fees both on instructions and counterclaim.
 7. The Taxing Officer misdirected herself on her discretion and awarded a fee which is manifestly high as to amount to unjust enrichment of the Advocate.
 8. It is in the interest of justice and fairness that the Court grants the orders sought. The Respondent will not suffer any prejudice if the orders sought in this Application are granted.
 9. The 2nd Application is a Notice of Motion dated February 23, 2022 brought pursuant to Section 51 of the Advocates Act Chapter 16 of the Laws of Kenya; Rule 134 Advocates Remuneration Rules; Section 34, 63(e) of the Civil Procedure Rules; and Order 41 Rule 1 of the Civil Procedure Rules. The Applicant sought the following orders;
 - a. The Court to enter Judgment against the Respondent on the amount of Kshs 10,884,140.01/- certified on the Certificate of Taxation herein dated January 27, 2022, together with interest at the rate of 14% per annum from February 17, 2021, being the date of service of the notice & bill upon the Respondent, until payment in full.
 - b. A Decree issues in respect of the sum of Kshs 10,884,140.01 certified on the Certificate of Taxation dated January 27, 2022, together with interest at the rate of 14% per annum from the February 17, 2021 until payment in full, and that the Applicant be at liberty to execute for recovery of same in such manner as a Decree of this Court.
 - c. The costs of this Application be provided for.
 10. The Application was supported by the sworn Affidavit of Eugene Lubale Lubulellah who stated that the Advocate's and Client Bill of Costs herein has been taxed and a Certificate of Taxation issued therefrom. The Advocates wish to proceed and realize the costs taxed herein by way of execution hence judgment and Decree are required therefrom. It is therefore just and fair that the orders sought herein be granted.



11. In response to this Application, the Advocate/Respondent filed Grounds of Opposition dated May 18, 2022.

Applicant's Case

12. It was the Applicant's case that the Award of Instruction Fees of Kshs 3, 469, 356.71/= and total of Kshs 10, 884, 140.01/= by the Taxing Officer on the Advocate's Bill of Costs was so manifestly high/excessive that it Amounts to an injustice to the Client Applicant.
13. The Applicant submitted that a judge of the High Court will only interfere with a taxing master's decision on a Bill of Costs where it is shown by either party that the amount awarded is either so low or so high that it amounts to an injustice. (See: *Republic vs Ministry of Agriculture & 20 Others Ex-Patte Muchiri W' Njuguna [2006] eKLR*)
14. The Applicant added that the Taxing Officer misdirected herself on her discretion by awarding an instruction fee which is so manifestly high or excessive as to amount to an injustice and to the Client and self-enrichment of the Advocate. By failing to consider the payments already made by the Client to the Advocate, the improperly exercised and/or abused her discretion.
15. It was the Applicant's argument that while the Respondent presented documentary evidence of its payment of Kshs 2, 500, 000/= and Kshs 6, 400, 000, the taxing master declined to consider the same in her ruling. There is no indication that they ever factored in these payments anywhere in her ruling. This, amounts to a misdirection, error of principle, and an abuse of discretion and hence warrants an interference with her exercise of discretion as regards the taxation of the Advocate's Bill of Costs.
16. The Taxing Officer's decision on Taxation of the Advocate's Bill of Costs was based on an error of principle leading to an Award that is so manifestly excessive as to justify interference based on the error of principle the learned Taxing Officer clearly failed to consider payments made to the Advocate by the Client herein, thereby running into or making an error of principle and awarding manifestly excessive fees on the Advocate's Bill of Costs. In effect, the amount of instruction fees awarded and the total sum awarded to the Advocate is so excessive that it amounts to unjust enrichment of the Advocate.
17. It was also the Applicant's position that it is not clear from the ruling whether the learned taxing master duly considered and properly applied these principles. This failure or the consideration of wrong principles is an error of principle which is amenable to interference by the court.
18. The Taxing Officer failed to particularize any novelty, complexity, forensic responsibility, and volumes of documentation involved in the work that the Advocate herein did on the Client's behalf and instructions. Further, the Taxing officer failed to take into account or consider the fact that the Advocate's authorized agent, one Willy Mutubwa, only came on board as a consultant and joined other Advocates already on record for the Client Applicant. The Taxing Officer ought to have taken this into account and appropriately taxed off the instruction fees considering that there was no extraordinary the labor, skill (over and above that which is reasonably expected of Counsel), novelty, complexity, and documentation involved in the matter.
19. Having joined the arbitral proceedings midway when other Advocates had already done much of the work, the Respondent herein was not entitled to full instruction fees. Therefore, it was the Applicant's submission that the Deputy Registrar made an error when she failed to consider this important factor. This error of principle led to the taxing master awarding fees that were manifestly excessive in the circumstances.



20. In increasing the instruction fees from the calculated amount of Kshs 2, 269, 356.71/= to Kshs 3, 469, 356. 71/=, the learned Taxing Officer only considered 'the nature of the claim by the plaintiff [and] the voluminous documentation filed' without considering the other equally important factors such as complexity, novelty, skill, and labor. This, borders on an abuse of discretion and application of wrong principles or taking into account irrelevant factors, thereby resulting in an error of principle.
21. The learned Taxing Officer made an error principle when she found and held that the Advocate's Bill of Costs 'is in relation to MISC 32 of 2016 and not arbitral proceedings.' This is a misdirection on the Taxing Officer's as it is not understandable where and how the master came to such a conclusion while the Advocate's Bill is clearly predicated upon the arbitral proceedings and makes several referrals to the Arbitrator and arbitration.
22. The Applicant/Client submitted since the it has demonstrated the merits of its application by showing that the Taxing Officer erred both in law and fact, it is entitled to the costs of this Application as the successful party.
23. On the other hand, the Respondent/Advocate is not entitled to entry of judgment and issuance of Decree on the Certificate of Costs since there is a pending reference application challenging the deputy registrar's decision which culminated into the issuance of the certificate of taxation dated January 27, 2022, the Advocate's application for entry of judgment and issuance of a decree is premature and ought to be dismissed with costs to the Client.
24. The filing of the reference by the Client impugns the certificate of costs issued to the Advocate and hence the same remains in abeyance to await the outcome of the reference application which may eventually recall or set aside the certificate. There cannot be entry of judgement on the same certificate which may have to be recalled and amended accordingly in line with the court's decision on the reference.
25. The Advocate has sought for judgment and decree in the sum of Kshs 10, 884,140.01/= together with interest at the rate of 14% per annum from February 17, 2021 until payment in full. Without prejudice the interest awardable to the Advocate ought to be at Court rates (14%) per annum from 30 days after the date of service of the Bill of Costs upon the Client and not from February 17, 2021 as indicated by the Advocate.
26. In the alternative, the Applicant submitted that the interests on the amount taxed ought to take effect from the date when the Court will have made a determination on the Client's reference and not from the date of delivery of the Bill to the Client. In *Lubulellah & Associates Advocates v NK Brothers Limited [2014] eKLR*, the Court after considering a similar application ordered that on the taxed amount was to be at court rates with effect from when the court made its determination of the Applicant's reference.
27. The Applicant concluded by submitting that having demonstrated that the learned Taxing Officer made errors of principle and awarded a grossly and manifestly excessive fees to the Advocate herein, the Client's reference Application is meritorious.

Respondent's Case

28. It was the Respondent/Advocate's case that the scales provided under the Advocates (Remuneration) Order are the minimum fees chargeable and taxable for services rendered by an Advocate and it is trite law that the taxing Master has and unfettered discretion to increase the instructions fee after considering and reviewing the matter.



29. The Respondent added that even if it is shown that the Taxing Officer erred in principle, the judge should only interfere if satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties as was held in *Alice Yano t/ a Yano & Co Advocates v Rebecca Nadupoi Supeyo & another [2021] eKLR*
30. It was the Respondent/Advocate's position that the Client has failed to demonstrate, through its application or submissions, any instance of a particular error in principle by the Taxing Master, and that such error substantially affected the decision on quantum. Accordingly, the client's claim that the fees awarded by the Taxing Master are so manifestly excessive leading to an injustice, is untenable as the same lacks any foundation (demonstration of an error in principle) nor any evidence. The Client has only identified errors of fact, which did not materially affect the assessment of the costs.
31. It must from the onset be noted that the Client has not annexed, to the affidavit in support of its reference application, any evidence of the alleged payments of Kshs 2,500,000 and Kshs 6,400,000. Therefore, the Client's main qualm with the taxation can be seen at paragraph 8 of its written submissions, where it claims that the Taxing Officer declined to consider alleged payments of Kshs 2,500,000 and Kshs 6,400,000 (which were vehemently disputed by the Advocate and in any case were not proved to the required standard of proof by the Client) which the Client terms as a misdirection, error of principle and abuse of discretion.
32. The Taxing Officer's declination to factor the disputed payments is an issue of fact, and not an issue of principle, hence the Taxing Master cannot be said to have made an error of principle by declining to deduct the unproved payments from sums found to be due under taxation.
33. It was the Respondent's argument that the Client is bound by its pleadings, in this case, the items stated in its Notice of Objection to Taxation and is only allowed to challenge the taxation on the basis of items indicated in the Notice of Objection to Taxation. The Client, thus, cannot now seek to challenge the taxation on any items not included in its Notice of Objection to Taxation, especially and including the issue of alleged payments of Kshs 2, 500.000 and Kshs 6, 400.000, which was not among the items listed in the Notice of Objection of Taxation.
34. The consequence of this failure is that the Client did not specifically seek, before filing the reference, reasons for the Taxing Master's decision on declining to factor the alleged payments of Kshs 2, 500, 000 and Kshs 6, 400, 000, 14 (fourteen) days before filing the instant reference. Sub-rule (1) of Rule 2 Paragraph 11 of the Advocates Remuneration Order requires the party objecting to give notice in writing within 14 days 'of the items of taxation to which he objects'.
35. It was the Respondent's submission that the monies allegedly paid by the Client to the personal account of a former partner of the Advocate firm of Lubulellah & Associates Advocates (whether WA Mutubwa, Dr Mutubwa or his firm Mutubwa & Company Advocates), are not and cannot be legally recognized as money received by the firm in the ordinary course of business ('client's money'), as the same were never deposited into the firm's Client Account but rather were deposited into a former partner's Personal Account.
36. Further, the Orders sought by the Client cannot be obtained by Chamber Summons under a reference challenging a ruling on Taxation or matters which are the preserve of the Taxing Master. As a general rule a Suit can only be instituted by way of a Complaint, Petition or Originating Summons (See: *Dorcas Nioki Mugo v Crispin Kienyu Kang 'etbe & another [2021] eKLR*). Neither the *Civil Procedure Act* nor the *Advocates Act* and the rules thereunder state that a Claim against an Advocate can be sustained through a Chamber Summons, or that a taxation of an Advocates costs can be converted into a contested litigation in the form of a Claim and Counter Claim.



37. The Client does not proffer anywhere in the grounds in its reference application and its submissions: -that there was no retainer, or that the Taxing Officer's assessment of the instruction fees was premised upon a wrong or erroneous value of the subject matter of the suit, or that the taxing master assessed the fees on the wrong schedule or version of the Advocates remuneration order, or that the Taxing Master failed to set out the basic instruction fee.
38. The Client only challenges the award of instruction fees on both the instructions (perhaps it meant 'Claim') and counterclaim, and its reference must be restricted to the same. From the holding in the case of *Peter Muthoka & another vs Ochieng & 3 others [2019] eKLR*, it is trite that a Taxing Officer must determine the instruction fees from the value of the subject matter as disclosed in either the pleadings, the judgment or the settlement and it is not open to the taxing officer to use them in combination, as the provision is expressly disjunctive as opposed to conjunctive; and further, it is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements of taxation.
39. The value of the subject matter in the matter was aptly disclosed throughout the pleadings in the demised matter, especially in the Statement of Claim, Defense to Claim & Counter-Claim filed by the parties. It is instructive to note that the Client does not dispute that the value of the subject matter of taxation was indicated in the pleadings and that is what was duly assessed by the Taxing Officer. The Client only states that the same is manifestly excessive, without demonstrating how.
40. The Taxing Officer was bound to 'disjunctively' determine the instruction fees on the Claim from the value of the subject matter clearly indicated in the Statement of Claim, as she did, from the Statement of Claim appearing at pages 1 - 10 of the Advocate's Bundle of Documents filed herein.
41. The Learned Taxing Officer correctly applied her mind by appreciating the value of subject matter, its complexity, industry put and time taken on the matter, so as to arrive at a fair remuneration that is commensurate to the work done by the Advocate. It was the Respondent's argument that the Taxing Master in fact awarded the Advocate less than the basic allowable instruction fees as would have been awarded if based on the monetary sums claimed and pleaded by the Client.
42. The instruction fees as itemized by the Claimant is in fact drawn to the minimum prescribed scale provided under Schedule 6 of the Advocates (Remuneration) Order. A Defence to the counter-claim was indeed filed, the counter-claim heard and submissions on the same filed. The Taxing Officer was thus correct to tax the instruction fee on the claim and counter-claim as drawn in the bill, if not higher, on account of the complexity of the matter.
43. To deny the Advocates instruction fees on the counter-claim would be a scoff upon the legal profession. In the case of *Odera Obar & Co Advocates -v- Design & 2 Others [2016] eKLR* whereby it was held that instructions fees in respect of the Counter-Claim is independent of the instruction fee on the Plaintiff.
44. It is as a matter of fact not true that when instructions were given to Lubulellah & Associates witnesses had testified. The Advocates firm came on record for the Client in the Arbitration on the December 4, 2013, even before pleadings had closed as Victoria Furnishers Limited (the Respondent in the Arbitration) only filed its Written Statement of Defence and Counter-Claim on February 28, 2014 and served the same upon Lubulellah & Associates after which Lubulellah & Associates filed the Claimant's Reply to Defence and Defence to Counter-Claim, dated March 7, 2014, after which the firm of Lubulellah & Associates fully participated in the Arbitration Proceedings by filing the following: -Issues for Determination, Claimant Witness Statement No 1 by Victor Swanya Ogeto, Claimant



Witness Statement No 2 by Patrick Sagwa Kisia, Affidavit by Victor Swanya Ogeto dated September 19, 2013 and Claimant's Written Submissions dated May 29, 2015.

45. Finally, the Arbitral Award shows that the Claimant (Respondent herein) was at the hearing held from May 9, 2014 represented by 'Lubullellah & Associates'. Instruction fees was thus, without any shadow of doubt, fully earned by the Advocate firm, and to hold otherwise as urged by the client would have been a grave error in principle by the Taxing Master.
46. In *Nyaundi Tuiyott and Company Advocates v Tarita Development Limited ELD HC Misc Apple No 36 of 2011 [2016] eKLR* and *Lubullellah and Associates v NK Brothers Limited NRB Misc Appl No 52 of 2012 [2014] eKLR* where it was held that Schedule 6 of the Order was the appropriate scale for taxing fees in arbitral proceedings by reason of Rule 10(2) of the *Arbitration Rules*.
47. The normal practice is that a taxation should only be remitted back to the Taxing Officer for reassessment if the Judge is satisfied that the error could have materially affected the assessment. In this case it has not been demonstrated by the client that there exists any error which could have materially affected the Taxing Officer's Assessment.
48. Notwithstanding the above, the Client has not been candid to disclose to the court that the subject matter of High Court Misc 32 of 2016 in fact pertains to the very subject arbitration taxed herein and hence such error did not at all materially affect the assessment.
49. Consequently, the Client's objection is without merit, because even if the bill is remitted for reassessment, the Taxing Officer would still be obligated to assess fees using the very same scales applicable to proceedings under the High Court - which is Schedule 6 of the Advocates Remuneration Order to - and to do this would be an exercise in futility, turning to nothing and lead to no different result than the taxing master reached in respect of the subject Bill of Costs.

Issues For Determination

50. After considering both Applications and the written submission, the issues for determination are;
 - a. Whether the decision/Ruling of the Taxing Officer delivered on January 14, 2022 should be set aside/or reviewed;
 - b. Whether the Court should re-assess the instruction fees due to the Advocate/Respondent in respect of item No 1 of the Advocate-Client Bill of Costs;
 - c. Whether the Advocate-Client Bill of costs dated January 29, 2021 should be remitted for review and reconsideration by the Taxing Officer;
 - d. Whether Judgment should be entered as per the Certificate of Taxation together with interest at the rate of 14% per annum from February 17, 2021 and a decree issued.

Analysis

51. The jurisdiction of this court to intervene in the decision of Taxing Officer, is limited. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR* the Court of Appeal explained that,
 - ' On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.'



52. It was the Applicant's argument that the amount of instruction fees awarded and the total sum awarded to the Advocate is so excessive that it amounts to unjust enrichment of the Advocate.
53. This court can only interfere in the decision of the taxing master if it is shown that:
- a) The taxing master has misdirected himself;
 - b) Applied wrong principles; and
 - c) The amount taxed is extremely excessive or extremely low.
54. The above basic principles for taxation matters are set out in the *Premchand Raichand Ltd & Another versus Quarry Services East Africa Ltd (1972) EA 162*. In the words of Spry, VP;

' The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks that the award is too high or too low as to amount to an injustice to one party or the other.'

Whether the Taxing Officer applied wrong principles of law thereby arrived at a wrong decision/Ruling delivered on January 14, 2022; and whether it should be set aside or be remitted for review or re-assessment or reconsideration at Item 1 of the Advocate-Client Bill of Costs?

55. While determining the instruction fee, the Taxing Officer appreciated the law regarding the assessment of the instruction fee as was held by the Court of Appeal in *Joreth Ltd v Kigano & Associates [2002] eKLR* that the value of the subject matter for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement but if the same is not ascertainable, the Taxing Officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances. In light of this holding, the Taxing Officer determined the value of the subject matter from the award of the arbitrator of Kshs 118, 467, 835.56. No error of principle is apparent on this item.
56. The Applicant/Client took issue with the Advocate/Respondent joining the arbitral proceedings midway when other Advocates had already done much of the work thus the Respondent herein was not entitled to full instruction fees. This court associates itself fully with the holding by the Court of Appeal in *Joreth Ltd v Kigano & Associates (supra)* where the Court held that,
- ' The instruction fees is an independent and static item, it is charged once only and it is not affected or determined by the stage the suit has reached.'
57. Similarly, in *First American Bank of Kenya v Shah and others [2002] 1 EA*. This position was emphasized in *JM Njenga & Co Advocates v Kenya Tea Development Agency Limited [2011] eKLR* where it was stated that a new advocate coming onto a matter somewhere in the middle of the proceedings in the High Court will be entitled to the full instruction fee and that a client who changes advocates in the High Court therefore can expect to pay the full instruction fee as many times as he pleases to change advocates notwithstanding that he can recover only one instruction fee in a Party and Party Taxation unless there is a certificate for more than one counsel.



58. It was also the Applicant's argument that while the it presented documentary evidence of payment of Kshs 2, 500, 000/= and Kshs 6, 400, 000, the taxing master declined to consider the same in her ruling. Based on the evidence before the Court, some of these payments were made directly to Willy Mutubwa and some payments made to the firm of Lubullellah & Associates. It therefore cannot be said that Willy Mutubwa received funds on behalf of the Respondent.

59. The Applicant has failed to prove that the Taxing Officer did commit an error in principle when assessing the costs.

'Whether judgment should be entered as per the Certificate of Taxation together with interest at the rate of 14% per annum from February 17, 2021 and a decree issued?'

60. Section 51(2) of the *Advocates Act* reads as follows;

' 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 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.'

61. The issue of retainer cannot arise since the Applicant does acknowledge that the Respondent took over the matter halfway. In the Applicant's words;

' Having joined the arbitral proceedings midway when other Advocates had already done much of the work, the Respondent herein was not entitled to full instruction fees.'

62. The Certificate of Costs having not been set aside, this court is satisfied that judgment be entered for the Advocates against the Client for the sum of Kshs 10,884,140.01/- as certified on the Certificate of Taxation herein dated January 27, 2022.

63. On the issue of interest, the applicable law is found at Rule 7 of the Advocates Remuneration Order which provides that: -

' An Advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.'

64. The Applicant has not availed any document or stated in the annexed supporting affidavit that it had submitted a fee-note to the Respondent indicating that it would attract interest at the rate of 14% per annum one month from February 17, 2021.

65. 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.'



66. 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; the prayer for interest at 14% p.a to start accruing one month after February 17, 2021, is therefore disallowed.

Findings And Determination

67. In the light of the foregoing this court makes the following findings and determinations;

- i. The 1st application dated February 7, 2022 seeking to set aside or review of the decision/Ruling of the Taxing Officer delivered on January 14, 2022 is found to be devoid of merit and it is hereby dismissed with costs.
- ii. The 2nd application dated February 23, 2022 is found to be partially meritorious and it is hereby partially allowed;
- iii. The Certificate of Taxation dated January 27, 2022 in the sum of Kshs 10,884,140/01 is hereby adopted as a Judgment of this court.
- iv. There shall be no order as to interest at 14% p.a as prayed.
- v. A Decree to issue in respect of the sum of Kshs 10,884,140/01 as certified on the Certificate of Taxation dated January 27, 2022, and the Applicant shall be at liberty to execute for recovery of same.
- vi. The Respondent Client shall bear the costs on both applications.

68 Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2022.

HON. A. MSHILA

JUDGE

In the presence of;

E. Lubullelah for the Advocate

No appearance for the Client

Lucy-----Court Assistant

