



REPUBLIC OF KENYA



KENYA LAW
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**Odundo Odhiambo & Co Advocates v Mugwimi (Miscellaneous Application
E125 of 2022) [2025] KEHC 130 (KLR) (15 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 130 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E125 OF 2022**

A MSHILA, J

JANUARY 15, 2025

BETWEEN

ODUNDO ODHIAMBO & CO ADVOCATES APPLICANT

AND

JIMMY LEE MUGWIMI RESPONDENT

RULING

Background

1. Before court is the Notice of Motion dated 24th July, 2024 and brought under Section 51(2) of the *Advocates Act* (CAP 16). The Applicant sought for the following orders:-
 - a. That Judgment be entered in favor of the Applicant/Advocate herein, in accordance with the taxed costs together with interest from the date of the Bill of Costs on the 13th day of July, 2022.
 - b. That the Applicant be at liberty to execute the Judgment against the Respondent herein.
 - c. That the costs be provided for.
2. The application is premised on the grounds on the face of the application and the Supporting Affidavit of Collins Odundo dated 24/07/2024 made in support of the application; therein he states that the Respondent instructed the firm of Odundo Odhiambo Advocates & Co. Advocates to act for him in Thika Chief Magistrates Court in Civil Case No. E143 of 2021.
3. The Respondent failed to pay the legal fees thereby necessitating the filing of the Bill of Costs which was taxed and a Certificate of Taxation was taxed at Kshs.113,000/- which 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 Kshs.113,000/- 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 Kshs.113,000/- and;
 - ii. Whether interest is applicable thereon.

Analysis

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 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 *Lubulellab & Associates Advocates v 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 enter judgment as prayed against the Respondent.

Whether interest is applicable thereon and payable

13. The Applicant seeks the court to grant interest on the sum of Kshs.113,000/- until payment in full.
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 the bill to the client.

16. In the case of *Kerongo & Company Advocates v 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. After careful perusal of the court record this court notes that the Applicant did not annex any copy of the Demand Letter to the application; and nowhere is there a claim for interest raised in the Notice of Taxation or otherwise.

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; the prayer for interest to start accruing on the 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 issued on 26/04/2024 in the sum of Kshs. 113,000/- is hereby adopted as a Judgment of this court. Judgment be and is hereby entered in favour of the Applicant/Advocates in the sum of Kshs. 113,000/-.
- iii. The prayer for interest is found to be devoid of merit and it is hereby disallowed.
- iv. Each party to bear own their costs of this application.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 15TH DAY OF JANUARY, 2025.

HON. A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

No appearance by Applicant

