



**Wekesa & Simiyu Advocates v Masinde Muliro University of Science and Technology
(Miscellaneous Application 164 of 2023) [2025] KEHC 1726 (KLR) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION 164 OF 2023**

S MBUNGI, J

FEBRUARY 24, 2025

IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 OF THE LAWS OF KENYA

AND

**IN THE MATTER OF AN ADVOCATE /CLIENT ITEMIZED BILL OF
COSTS ARISING FROM LEGAL REPRESENTATION IN HCCMISC. CIVIL
APPLICATION NO. 237 OF 2014 KAKAMEGA, MASINDE MULIRO
UNIVERSITY OF SCIENCE AND TECHNOLOGY VS ALFATECH.**

BETWEEN

WEKESA & SIMIYU ADVOCATES ADVOCATE

AND

**MASINDE MULIRO UNIVERSITY OF SCIENCE AND
TECHNOLOGY CLIENT**

RULING

1. Vide a notice of motion application dated 15th July 2024, the Applicant sought the following orders;
 - a. That judgment be entered in favor of the Advocate/ Applicant as against the client / Respondent for the sum of Kshs. 357,310.00 with interest at 14% per annum from 2nd December 2023 being 30 days from delivery of the Advocate/Client bill of costs to the client/ Respondent, until payment in full.
 - b. That the costs of this notice of motion be bore by the client/ Respondent and be assessed and set by this Honorable Court.
2. The application is premised on the grounds set out on its face and on the supporting affidavit sworn on 15th July 2024 by the Applicant.



3. The Applicant avers that the Respondent instructed their firm Wekesa & Simiyu Advocates to act on their behalf in the case of Hcc. Misc. Civil Application No 237 Of 2014 Kakamega Masinde Muliro University of Science and Technology Vs. Alfatech Contractors Limited which sought to enforce an arbitral award made on 18/07/2017.
4. They claim that they acted as instructed by the client/respondent and later filled their bill of costs dated 27th October 2023 to the client seeking a settlement of Kshs. 1,169,310 for which the client failed to act upon.
5. They stated that they were forced to file the advocate/client bill of cost Misc. Application No 164 of 2023 when the client failed/ neglected to pay their costs.
6. He avers that when the matter was heard by the taxing master on 14th May 2024 for the bill of costs dated 27th October 2023, the same was taxed in the sum of Kshs. 357,310.
7. They aver that they served the certificate of taxation dated 3rd July 2024 together with a demand notice on 5th July 2024 seeking the payment of Kshs. 357,310 and that the client/ respondent ignored the demand notice dated 25th July 2024 for which the client/Respondent has never varied the ruling by the tax master in court.
8. The Applicant now seeks for a judgment be entered in their favor in the sum of Kshs. 357,310/= together with interest at 14% per annum from 2nd December 2023 until payment in full and costs of the application.
9. The Applicant herein has raised, highlighted and amplified three salient and pertinent issues for consideration by the court in his submission dated 15th July 2024. on the first ground of whether the judgment ought to enter on the certificate of costs for the advocate/applicant, they held that their bill of costs taxed on 14th May 2024 at Kshs. 357,310/= has not been challenged by the client/ respondent and seek that a judgment be entered and a decree be issued on the outstanding costs.
10. They submitted that this court exercises its discretion in their favor for the sum on the certificate of taxation dated 3rd July 2024 together with interest and costs since the ruling by the taxing master has not been varied or challenged.
11. They quoted the court of appeal decision in Peter Odiwuor Ngoge T/A O.P Ngoge & Associate vs. Washington Jalango. They emphasized on the requirements that a court ought to consider before a judgment is entered under section 51 of the *Advocates Act*.
12. In support of their case, they relied on the case of Nzei & company Advocates vs. Davis Mutiso Nthenge (2016) eKLR and Gitau and Kaburu Advocates LLP vs. African Merchant Assurance Co. Ltd (2019) eKLR where the court opined that judgment ought to be entered where a certificate of costs had not been set aside by a reference.
13. They submitted that the application had not been opposed by the client/Respondent where their costs had been taxed on 14th May 2024 at Kshs. 357,310/= and a certificate of costs issued on 3rd July 2024.
14. According to the Applicant, they do not have to file a fresh suit to recover their costs and in support relied in the case of Lubullellah & Associates Advocates Vs. N.K. Brothers Limited (2014) eKLR, Mbugua & Mbugua Advocates vs. Kenindia Assurance Co. Ltd (2006) eKLR.
15. On the claim of whether they are entitled to the interest on the taxed costs at 14% per annum as from the 2nd December when they filled their bill of costs, they relied on section 26 (1) of the *Civil Procedure Act* where the court has the discretion to award interest together with the costs. They further invoked



this court's jurisdiction under section 51 (2) of the Advocates' Act as stated in the case of Lubulellah & Associates Advocates Vs. N.K Brothers Limited (2014) eKLR

16. On their clam for interest, they held that they had served the advocate/client bill of costs dated 27th October 2023 seeking Kshs. 1,169,310 which the client/ Respondent failed to respond. They quoted the case of Francis Mwanza Mulwa vs. Afrisons Export Import limited & Another (2015) eKLR and Anthony Thuo Kanai T/A A. Thuo Kanai Advocates vs. Vishisht Talwar .
17. They submitted that the court has the discretion to award the interest to the costs since they had served their clients with the fee note which they never Respondent to and they had met the requirements under paragraph 7 of the Advocates Remuneration order 2009.
18. They finally submitted that they were entitled to the costs of the application since the client had been reluctant to settle their outstanding legal fees and pray that the court allows their judgment for the sum of Kshs. 357,310 with interest rate at the rate of 14% per annum as from 2nd December 2023 together with the attendant costs of Kshs. 44,100/= or any such sum that the court deemed fair.
19. I have considered the application and the applicant's submission, and guided by the principles espoused in the established case of Mbogo & Another vs Shah [1968] EA, p.15 that;

“An appellate court will not interfere with the exercise of the trial court's discretion unless it is satisfied that the court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous, or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of judicial discretion and that as a result there has been injustice.”
20. More particularly, in the case of Kipkorir, Tito & Kiara Advocates vs. Deposit Protection Fund Board [2005] eKLR this Court observed;

“On 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.”
21. With these principles in mind, the issues for determination are;
 - a. whether the advocate/applicant is entitled to the judgment entered in the certificate of costs.
 - b. whether he entitled to the interest on the costs and the rate of 14% per annum from the date the Bill of costs was served upon the client.
22. It is undisputed that the Respondent herein indeed instructed, engaged and retained the Applicant to offer certain professional/ Legal services to and in favor of the Respondent.
23. The Respondent has neither contested nor disputed the fact of such instructions or engagement. Consequently, it is safe and sound to hold that there is no dispute as pertains to retainership.
24. The applicant/ advocate rightfully admitted that they submitted their bill of costs of the amount of Kshs. 1,169,310/= to the taxing master who made a ruling on 14th May 2024 at the sum of Kshs. 357,310/= and a certificate of taxation issued on 3rd July 2024 for which they served their clients/ Respondent who have refused, neglected to make payment to the legal fees.
25. The applicant claims now that they are entitled to the interest of 14% per annum as from 2nd December 2023 when the bill of costs was delivered to the client/respondent pursuant to paragraph 7 of the Advocates (Remuneration) order 2009 as the same was itemized in the bill of costs.



26. From the foregoing observation, what comes out clear is that the certificate of taxation which was issued on the 3rd May 2024, has neither been challenged, varied or rescinded whatsoever.
27. On the other hand, it is not lost on the court that the issue of retainership is not in dispute. For the avoidance of doubt, the Respondent herein has not impugned or impeached the existence of retainership.
28. Premised on the foregoing, the critical question that does arise is whether the Applicant has satisfied the requisite provisions of section 51(2) of the *Advocates Act*, Chapter 16 Laws of Kenya, to warrant entry of Judgment in terms of the certificate of taxation.
29. Section 51(2) of the *Advocates Act* stipulates:

“The certificate of a Taxing Officer by whom it 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.”
30. My reading and understanding of the said provisions concludes that there are two hurdles that must be surmounted by an Applicant before Judgment can be entered in terms of the certificate of taxation.
31. Firstly, the Applicant is obliged and obligated to satisfy the Honorable court that there was indeed retainership. In this regard, proof of retainership is paramount and significant. The proof has not been disputed hence the ground stands.
32. Secondly, an Applicant is enjoined to prove that the certificate of taxation upon which Judgment is sought, has neither been reviewed, varied or otherwise rescinded.
33. Suffice it to point out that in respect of the subject matter, the certificate of taxation issued on the 3rd July 2024 has not been varied or rescinded, in accordance with the law or at all.
34. In the circumstances, it is my finding that the applicant is entitled to Judgment on the certificate of taxation issued and signed on the 3rd May 2024, by the Taxing Officer.
35. On whether the applicant/advocate is entitled to the interest on the costs at 14% per annum from the time bill of cost was served on the client/ respondent 2nd December 2023.
36. Rule 7 of the Advocates (Remuneration) Order allows an advocate to charge interest at 14% per annum on 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. The Applicant urged the Court to award interest as prayed and in the alternative to award interest at court rates.
37. The Court has perused the Bill of Costs dated 27th October 2023 that was filed by the Applicant and a letter dated 27th October 2023 addressed to the client/respondent to support its claim that it had raised or notified the Respondent.
38. The court of Appeal in the case *Machira & Co. Advocates v Arthur K. Magugu & another* [2019] eKLR, on advocate’s entitlement to interest under paragraph 7 of the Advocates Remuneration stated that:

“The learned judge found correctly in our view that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per annum at least one



(1) month before filing the Bill of Costs. The appellant relied on a letter from counsel for the respondent to justify his position that the learned judge should have awarded him interest at 14% from the date of taxation. We note that the said letter refers to the decretal sum claimed while the issue of interest has not been addressed. The appellant did not produce a copy of his firm's letter of 9th August, 2001 referred to in the respondents' counsels letter of 20th September, 2001 to support his claim.

Accordingly, we find that the learned judge did not err in finding that the appellant did not furnish the court with any evidence that they had claimed interest at fourteen (14%) per cent at least one (1) month before they filed their Bill of Costs. They were therefore not entitled to interest at 14%."

39. The Applicant letter and bill of cost dated 27th October 2023 does not disclose that the applicant included a charge for "...interest at 14% per annum on his (her) disbursements and cost...".
40. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure.
41. Though the taxing master was entitled to exercise his discretion to award interest, there was no basis established for awarding the appellant interest at 14% per annum from the date of the bill of costs until payment in full since the applicant did not raise it from the evidence presented in court.

Findings and Determination

42. In the light of the foregoing this court makes the following findings and determinations;
 - i. The application dated 15th July 2024 is found to be partially meritorious;
 - ii. This court finds that there is no legal requirement for a fresh suit to be filed for the recovery of taxed costs;
 - iii. The Certificate of Taxation dated 3rd July 2023 is hereby adopted as a Judgment of this court made in favor of the Applicant in the sum of Kshs. 357,310/-.
 - iv. Interest on the taxed costs at 14% is disallowed;
 - v. The applicant/advocate shall have the costs of this Application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF FEBRUARY, 2025.

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Elizabeth Angong'a

Ms Nthenya Mulungye for Advocate/Applicant- present online.

Respondent -Absent.

