



Muri Mwaniki & Wamiti Advocates v Kamau James Gitutho t/a Gitutho Associates (Judicial Review Miscellaneous Application 9 of 2019) [2025] KEHC 4295 (KLR) (Judicial Review) (2 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 9 OF 2019**

RE ABURILI, J

APRIL 2, 2025

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

KAMAU JAMES GITUTHO T/A GITUTHO ASSOCIATES RESPONDENT

RULING

1. This Ruling determines whether interest is payable on taxed costs which are already settled between the parties hereto. According to the Respondent, the Bill of costs was never served on him hence the applicant is not entitled to interest as stipulate din Rule 7 of the Advocates Remuneration Order. The respondent advocate contends that the bill of costs was taxed exparte on 27/6/2019 and that on 18/7/2019, the respondent filed a reference which he withdrew on 12/4/2024 and on the same latter day, the applicant served the respondent with a taxation certificate and on 20th May, 2024, filed an application for judgment to be entered on the taxed costs pursuant to section 51 of the Advocates Act.
2. That subsequently, the respondent paid the costs as taxed on 12/6/2024. He therefore argues that they learnt of the bill of costs on 12/4/2024 and settled on 12/6/2024 hence not interest would accrue on the same.
3. On the part of the applicant, it was argued that he is entitled to interest because the bill was served on the client, but the client never appeared hence taxation after which the advocate forwarded the certificate of taxed costs to the client and subsequently, the advocate applied for entry of judgment on the taxed costs in the application dated 20/5/2024 and that the costs were settled on 12/6/2024. He submitted that the costs having been entered and judgment having been entered, interest should be paid. The parties argued this issue of interest, orally, after it became clear that they could not agree on whether interest was payable or not.



Analysis and determination

4. The question is whether interest is payable and if so, from which date. To answer that question, I must state what the law provides.
5. 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.”
6. In this case, costs were taxed on 27/6/2019 and vide an application dated 6th November 2019, the respondent filed an application seeking to set aside the ruling that taxed the costs and that the respondent be granted leave to defend the bill of costs. The Deputy Registrar vide her ruling dated 27th September 2022 dismissed that application on the ground that the respondent had not denied service as contained in the affidavit of service dated 29th April, 2019 filed in court, showing that the respondents were served on 29th April, 2019.
7. The Deputy Registrar in her ruling was satisfied that the respondent was served on the aforesaid date with the bill of costs and the documents related to this matter and not any other matter as was later clarified by the applicant’s counsel vide letters dated 9th and 15th May, 2019 yet the respondent insisted that he be served again with the same documents which insistence the Deputy Registrar dismissed.
8. There was no appeal filed against the above ruling where a court of competent jurisdiction found that the respondent was duly served with a bill of costs that was due for taxation.
9. For the above reason, the issue of whether the bill of costs was taxed *ex parte* cannot be raised at this stage again as it was settled by the court and is moot. In other words, it is *res judicata*.
10. It follows that applying the provisions of Rule 7 of the Advocates Remuneration Order above, the interest would be payable on the taxed costs at 14% per annum from one month after the service of the said bill of costs.
11. The question is, did the advocate/ applicant raise the issue of interest in the bill of costs served upon the client and what is the effect of not raising the issue of interest in the bill of costs?
12. Rule 7 of the Advocates Remuneration Order contemplates a situation where the applicant raised the issue of interest in the bill of costs thereby notifying the respondent, early enough that unless the costs are paid, they attract such interest, one month after delivery of the said bill of costs.
13. In this case, I have perused the bill of costs 16th April 2019 and I find no evidence that in the said bill, the applicant claimed for interest. In addition, the bill was served on the respondent after it was filed in court and throughout, the respondent had no idea that the advocate would charge interest until the applicant filed into court the application for adoption of the certificate of taxation as judgment of the court for the taxed costs.
14. The applicant claims for interest from 29th May, 2019. As stated earlier, it was not until the applicant in the application dated 20th May 2024 seeking for judgment on taxed costs in prayer 2 asked for interest from 16th May 2019, the date of the said bill of costs as opposed to, under Rule 7 of the Advocates Remuneration Order which would be one month after service of the bill of costs upon the respondent.



The court was to hear that application on merit but in the intervening period, the respondent settled the taxed costs on 12/6/2024 leaving the issue of interest, which is subject of this ruling.

15. Having carefully considered the respective parties' positions and upon perusal of the court file, it is clear that the Certificate of Costs that was issued by the Taxing Master/ Deputy Registrar on 27th June, 2019 has not been set aside and/or altered. Indeed, the reference dated 18th July 2019 against the respondent under Paragraph 11 of the Advocates Remuneration Order challenging the decision of the said Taxing Master was filed but withdrawn vide notice of withdrawal dated 12th April, 2024. It is also clear that there is no interest sought and obtained during the taxation of the said bill of costs as the certificate of costs does not contain any order on interest. It is also evident that the advocate did not challenge the fact that no interest was awarded to him in the certificate of costs, which interest was not sought.
16. Additionally, the Client was not opposed to the adoption of the taxed costs as a judgment sum. What it objected to was the interest claimed in the application for adoption of the certificate of taxation as judgment of the court.
17. In the case of Otieno Ragot & Company Advocates vs Kenya Ports Authority [2021] eKLR, it was held that although Rule 7 entitled an advocate to claim interest, the time from when interest would run was not stipulated and was therefore left to the discretion of the court.
18. My reading of the Rule 7, however, is clear that interest is chargeable where it is claimed or raised before the bill is settled.
19. In the case of 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.
20. In Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR the Court held that:

"As this court held in the cases of HC Misc No 486 and 487 of 2012 E.W. Njeru & Co Advocates (Supra), if an advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. ..."
21. It follows that interest would only be chargeable from the date where the client was served with a bill of costs containing a demand therein that the advocate would charge interest.
22. In the application is dated 20th May 2024 and served, according to the affidavit of service dated 12th June, 2024, sworn by Samuel Lundi Advocate, was served upon the respondent/ client on 10th June, 2024. The client therefore only came to learn of the issue of interest on 10th June, 2024 and settled the taxed costs on 12th June, 2024, two days later.
23. I reiterate that interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served, unless, as stipulated in Rule 7 of the Advocates Remuneration Order, such claim for interest was raised.
24. The Court of Appeal discussed this issue of interest chargeable at length in the case of Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd (Civil Appeal 165 of 2019) [2023] KECA 1443 (KLR) (24 November 2023) (Judgment) as follows, inter alia:



20. With respect, in the circumstances of this case, I think the learned Judge was obliged to utilize the awarded interest rate of 14% p.a. This is because in this case, the appellant put the client on notice about his claim for interest at 14% p.a. under Rule 7 of the Advocates Remuneration Order. The client, then, specifically litigated the interest in the taxation proceedings – and was awarded the interest by the Taxing Master. The appellant, therefore, made this claim to the client a priori so as to notify the client he would be demanding interest. The Certificate of Costs could, at the time it was issued, only reflect the interest as it stood on the date it was issued. However, having lawfully and procedurally awarded the appellant the interest at 14% p.a. by dint of Rule 7 of the Advocates Remuneration Order, it would be absurd to hold that the rate could be changed at the discretion of the High Court if the client failed to settle the amounts claimed necessitating the appellant to lodge section 51(2) enforcement proceedings. In the present case, the appellant claimed and was awarded interest at 14% p.a. during taxation and, therefore, had no need to invoke Rule 11 of the Advocates Remuneration Order to challenge it. [emphasis added]
25. The Court of Appeal further stated:
- “22. . To reiterate, the rule of law announced in the companion case, Kisumu Civil Appeal No. 129 of 2018, to the effect that an advocate is not permitted to surcharge a client interest at the rate of 14% p.a. under Rule 7 of the Advocates Remuneration Order unless he notified the client of that charge in his fee note/ bill to the client and in his Bill of Costs as lodged in Court has no application in this case. This is because, here, the advocate included the interest in the Bill of Costs and benefitted from a favourable award by the Taxing Master. It was incumbent upon the respondent, if dissatisfied with the award, to challenge it by invoking Rule 11 of the Advocates Remuneration Order; and it did not do so.”
26. The Court of Appeal did not stop there. It went further to clarify the position to erase any confusion on interest allowable on advocate / client costs and stated as follows, quite authoritatively:
- “I believe that this decision and its companion one in Kisumu Civil Appeal No. 129 of 2018 will remove the cobwebs of confusion reigning in this area. It comes down to a salutary advice for advocates: if one hopes to claim the 14% p.a. interest under Rule 7 of the Advocates Remuneration Order on a fee note or Bill of Costs, one must make the claim in the fee note and/or Bill of Costs. If the interest is not claimed in the fee note or Bill of Costs, an advocate loses his right to claim for it subsequently. Similarly, if the interest of 14% under Rule 7 of the Advocates Remuneration Order is not specifically awarded during the taxation proceedings, the advocate must invoke Rule 11 of the Advocates Remuneration Order and file a reference to protest the omission. The advocate cannot wait to introduce the interest during enforcement proceedings under section 51(2) of the *Advocates Act*. If the advocate demands interest at that late stage, he will likely suffer two potential perils: the court can only award interest at earliest from the date of lodging the Bill of Costs; and the interest is at the discretion of the court. However, where the interest of 14% p.a. under Rule 7 of the Advocates Remuneration Order is specifically claimed in the Bill of Costs and awarded during the taxation proceedings, the interest will apply to the taxed amount until it is fully paid. An application under 51(2) of the *Advocates Act* will not act to reduce the



interest rate or otherwise create a reservoir of discretion for the judge to change the interest rate.”[emphasis added]

27. For all the above reasons, I find that no interest is payable on the costs subject of these proceedings. The application for judgment on taxed costs dated 20th May 2024 is spent. the prayer for interest is declined.
28. I make no orders as to costs of the application for judgment on costs.
29. This file is accordingly closed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 2ND DAY OF APRIL, 2025

R.E. ABURILI

JUDGE

