



**Menezes & Partners Advocates v APA Insurance Limited (Miscellaneous Civil Application E009 of 2022) [2025] KEHC 5868 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5868 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS CIVIL APPLICATION E009 OF 2022**

**EM MURIITHI, J**

**MAY 8, 2025**

**BETWEEN**

**MENEZES & PARTNERS ADVOCATES ..... APPLICANT**

**AND**

**APA INSURANCE LIMITED ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion dated 14<sup>th</sup> November 2023 seeking principally orders:
  1. That judgment be entered for the sum of Ksh.287,056/- being the Applicant/Advocates taxed and certified costs in Kerugoya HC Misc. E009 of 2022.
  2. That the applicant be awarded interest at the rate of 14% per annum, from the 1st day of May 2022.
  3. That a Decree be issued forthwith.
  4. That the Honourable Court be pleased to issue such orders and give such directions as it may consider appropriate to meet the ends of justice.
  5. That the Respondent be condemned to pay the Applicant's costs of their application.
2. The application is based on the grounds in the application and the supporting affidavit of Pauline W. Kamunya setting out the facts relied on. The applicant's case is based on a certificate of taxation of costs issued by the Court 3/8/2023 and, relying on Rule 7 of the Advocates (Remuneration) Order 1962, the claim of interest from the 1/5/2022 is based on the fact that the Bill of Costs had been served on the Respondent on the 1/4/2022.
3. The Respondent opposed the application by a Replying affidavit of Shelmith Nguire of 27/1/2025, principally, on the grounds that the respondent had paid the sum of 141,920/- and that judgment



could therefore be entered for the full amount of taxed costs at 287,056/- and interest was only payable on disbursement and costs and not on government taxes, and the bill being an Advocates/Client Bill of Costs was subject to 5% Withholding Tax and 2% VAT as required by law; and that Costs of the application were in the discretion of the Court in the circumstances of each case.

### **Determination.**

4. The Court has considered the written and oral submissions made by the Counsel for the parties on the respective contentions.

### **Judgment for taxed costs.**

5. There is no contest that the Court has jurisdiction to enter judgment for advocates taxed costs in terms of section 51 (2) of the Advocates Act, which provides as follows:

“ 51. General provisions as to taxation

- (1) Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
- (2) 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.”

6. As held by the Supreme Court in Kenya Airports Authority v. Otieno Ragot and Company (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) Judgment:

“(71) We are also acutely aware of the provisions of Section 51(2) of the Advocates Act ... The words employed in the above provision are clear and demonstrate that the intention of the Legislature is that the costs ascertained by the certificate of taxation or costs, are final with respect to costs covered therein.”

7. The certificate of costs is final as to the amount of costs covered. But the Court may make such order in relation thereto including judgment for the sum certified to be due. In this discretion the Court must be able to take into account any payment made to the advocate before the certificate of taxation which is not accounted for in the taxation of costs.
8. On a balance of probabilities, the Court finds that payment to the Applicant of the sum of Ksh.141,920/= allegedly paid by respondent is proved in the absence of statement of accounts indicating otherwise. The payment vouchers presented by the respondent as proof of payment raise an evidential threshold calling on rebuttal by the applicant, and in its absence the court finds it more likely than not that the money was paid to the Applicant.
9. The statutory deductions by way of withholding tax and VAT must also be levied in the computation.

### **Interest.**

10. Rule 7 of the Advocates (Remuneration) Order provides as follows:

“



“7. Interest may be charged

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.

[L.N. 37/1977, s. 3, L.N. 117/1980, Sch., L.N. 159/2006, s. 3.]”

11. As I understand the Rule 7 on interest it permits the levy of “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” by the advocate and this is an item that the taxing officer should consider when taxing the Bill of Costs.
12. As provide under section 51(2) of the Advocates Act “(2) 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....”
13. The interest on the amount certified in the Certificate of Taxation is a different item, which, in my respectful view, ought to be considered on the basis of the provision for imposition of interest under, section 27(2) of the Civil Procedure Act. as with any other judgment on liquidated damages.
14. I should respectfully agree with the Court in *Otieno Ragot & Co. v. Keinindia Assurance Co. Ltd.* (2020) eKLR citing *D. Njogu & Co. Advocates v. Kenya national Capital Corporation* NRB HC Misc. No. 121 of 2005 that a grace period for the calculation of interest equivalent to the one month permitted under Rule 7 should be given for the reckoning of interest on the certified costs. The Certificate of Taxation of Costs was issued on 3/8/2023 and the Respondent shall be granted a grace period of 30 days so that interest accrues from 3/9/2023.

#### **Orders.**

15. Accordingly, for the reasons set out above, the Court shall enter judgment for the Applicant pursuant to section 51(2) of the Advocates Act for the sum of 145,136/= (the taxed costs of 287,056/= less sum already paid to the Applicant of 141,920/=) and together with interest pursuant to section 27(2) of the Civil Procedure Act. at 14% from the 3rd September 2023 until payment in full.
16. The amount awarded shall be subject to the statutory deductions applicable.
17. A decree shall be drawn and extracted in accordance with the rules of the Court.
18. The Respondent shall pay to the Applicant the costs of the application to be agreed between the parties or taxed in default of agreement.

Order Accordingly.

**DATED AND DELIVERED THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

