



Prof Tom Ojienda & Associates v County Government of Nairobi (Judicial Review Miscellaneous Application E027 of 2020) [2025] KEHC 6123 (KLR) (Judicial Review) (13 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E027 OF 2020
RE ABURILI, J
MAY 13, 2025**

BETWEEN

PROF TOM OJIENDA & ASSOCIATES APPLICANT

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. The Notice of Motion dated 9th March 2021 seeks orders that judgment be entered for the applicant advocate against the respondent in the sum of Kshs 2,746,085.60 as per the certificate of taxation dated 1st March, 2021 with interest from the date of filing this application until payment in full.
2. The applicant also seeks that he be allowed to execute the said judgment against the respondent County Government of Nairobi and that costs of the application be provided for.
3. The application is predicated on the grounds on the face of the Notice of Motion and the supporting affidavit sworn by Prof. Tom Odhiambo Ojienda SC on 9th March, 2021.
4. The applicant's case is that he was awarded advocate's costs in the sum pleaded hereinabove and certificate of taxation dated 1st March 2021 issued for the said costs pursuant to advocate bill of costs dated 29th July 2020.
5. That he notified the respondent of the said certificate of taxation and a demand for payment made but that the respondent has not complied with the demand.
6. The respondent did not file any opposing response to the application which was heard orally on 7th May 2025. On the said date, miss Ojienda counsel for the applicant law firm reiterated the contents of the application while the respondent's counsel Ms. Matunda submitted that the issue they had with



the application was the interest which was being sought, which interest was not included in the bill of costs hence it can only run from date of judgment.

Analysis and determination

7. I have considered the application as filed and argued orally by the applicant and the respondent's counsel. The only issue for determination is whether the prayers sought are available to the applicant.
8. On entry of Judgment on the amount taxed out of an Advocate-Client Bill of Costs, Section 51 (2) of the *Advocates Act* provides that:

“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.”

9. It is therefore not in doubt that the advocate would be entitled to apply for entry of judgment on the certificate of taxation where the certificate of taxation has not been set aside, where there is no dispute as to retainer and finally, where there is no pending reference filed by the respondent.
10. In *Lubulellah & Associates Advocates vs. N. K. Brothers Limited* [2014] eKLR the Court of Appeal explained the import of section 51(2) of the *Advocates Act* thus:

“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.”
See also *Musyoka & Wambua Advocates v Rustam Hira Advocate* [2006] eKLR.”

11. In this case, no reference has been filed challenging the certificate of taxation which is sought to be adopted as judgment on costs and no issue has been raised as to retainer.
12. Accordingly, I hereby enter judgment for the applicant advocate on the taxed costs of Kshs 2,746,085.60 as per the certificate of taxation dated 1st March, 2021.
13. On the second limb of the application which seeks for accrual of or entitlement to interest thereon, at an undisclosed percentage from the date of filing the application until payment in full, Paragraph 7 of the Advocates Remuneration Order provides that:

“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.”

14. Presently, the Court's appreciation of the above provision is that to entitle an Advocate to pursue interest on his fees, then under Rule 7 aforesaid, prior to filing his Bill of Costs in Court, the Advocate must have first served the proposed Bill upon the Client. If the Client does not pay the Bill within 30 days and as a result, the Advocate moves further and formally files the Bill in Court, then the Advocate shall become entitled to charge interest, at the rate of 14% per annum, on the amount that shall eventually be taxed and awarded by the Court. The only rider is that the claim for interest must have been raised by the Advocate before the amount in the Bill has been paid in full.



15. The above position and interpretation of Rule 7 of the Advocates Remuneration Order was stated as follows by Mabeya J in *Kithi & Company Advocates vs. Menengai Downs Limited* [2015] eKLR, persuasively:

“I will start with interest. There seems to be a misconception by legal practitioners on the award of interest on taxed costs. An Advocate is entitled to interest on the amount taxed on an Advocate/client Bill of Costs. The rate of interest awardable is 14% per Annum applicable from 30 days after the date of service of either the Block Fee Note or the Bills of Costs. This is clearly set out in Rule 7 of the Advocates Remuneration Order which provides: -

...

In view of the foregoing, once a judgment is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For an Advocate to be able to recover this, there must be evidence on record on the date when the bill was served upon the client...”

16. I have perused the documents in this file including the bill of costs dated 29th July 2020 in respect of legal services rendered by the applicant/ advocate herein in Judicial review Application No. 63 of 2011 between Jipe House Kindergarten Limited versus Nairobi City County and I find no item claiming for interest as per Paragraph 7 of the Advocates Remuneration Order reproduced above. I also find no evidence that the filed and taxed bill of costs was ever served upon the client/ respondent prior to the filing of the same in court for taxation.

17. In *Jackson Omwenga & Co. Advocates vs. Everest Enterprises Ltd* [2017], L. Njuguna J, remarked as follows:

“I have perused the Advocates Remuneration (Amendment) Order, Rule 7. Under the said rule, an advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.

To comply with that provision, the applicant must prove two things:

- (a) That one month has expired from the time he delivered his bill to the client;
- (b) He has raised his ‘claim’ for interest before the amount of the bill has been paid or tendered in full.”

18. I reiterate that in the instant case, there is not even the slightest evidence that the draft bill of costs was served upon the client respondent herein before it was filed in court for taxation.

19. In my humble view, therefore, an advocate cannot claim interest on a bill of costs under the Advocates Remuneration Order if interest was not expressly demanded in the bill served to the client prior to the filing into court. This is based on both the procedural expectations under the Remuneration Order and principles of fair notice and due process in costs litigation.

20. Under the cited Rule 7 of the the Advocates Remuneration Order, to lawfully claim the 14% interest, or any part thereof, on the taxed bill of costs, the advocate must:

- a. Serve the itemized bill of costs to the client,
- b. Explicitly include a demand for interest at 14% in the bill, and



- c. Wait for 30 days to lapse after service before interest begins to accrue.
21. If the advocate fails to include the interest demand in the bill, then:
 - a. The Taxing Officer lacks jurisdiction to award that interest during taxation; and
 - b. The Court cannot include interest in the certificate of taxation or any resulting judgment adopting the certificate of costs.
22. In *Lubulellah & Associates Advocates v N K Brothers Ltd* [supra], the Court of Appeal held that:

“Where an advocate seeks to recover interest on his fees, he must have demanded for the same in the bill served on the client.”
23. In *Musyoka & Wambua Advocates v Rustam Hira Advocate* [2006] eKLR, the court struck out a claim for interest not previously demanded in the bill, holding it was an afterthought and not compliant with Rule 7 of the Advocates Remuneration Order.
24. The Court of Appeal has recently addressed this issue of whether an advocate can claim interest on taxed costs when no prior demand was made before filing the bill of costs. In the case of *Otieno, Ragot & Company Advocates v. Kenindia Assurance Co. Ltd* (Civil Appeal 129 of 2019), [2023] KECA 1398 (KLR) (24 November 2023) (Judgment) the court held that an advocate cannot charge the 14% per annum interest under Rule 7 of the Advocates Remuneration Order without notifying the client. The court emphasized that it was incumbent upon the advocate to put the client on notice that they intended to claim interest at the point at which the bill of costs was drawn. It follows that an advocate is barred from springing up a claim for 14% interest during taxation or judgment application if it was not demanded in the original bill served to the client. To hold otherwise would amount to procedural unfairness and violate the clear requirements of the Advocates Remuneration Order.
25. In *Amondi & Company Advocates v. County Government of Kisumu* (Miscellaneous Application 73 of 2020), the Court reiterated that Rule 7 of the Advocates Remuneration Rules is clear that interest is chargeable at 14% per annum from the expiration of one month from the delivery of the bill to the client. However, the court also noted that interest does not become automatically chargeable after the lapse of one month; it is only chargeable provided that such claim for interest was raised before the amount of the bill has been paid or tendered in full.
26. The above decisions highlight the necessity for advocates to provide clear notice to clients regarding the intention to charge interest on costs and to adhere to the procedural requirements set out in the Advocates Remuneration Order
27. Accordingly, the judgment entered herein on the taxed costs as per the certificate of taxation is with no interest.
28. On the prayer for execution against the respondent, that is a premature prayer and more so, the procedure for recovery from the Government whether county or national government, where there is no settlement, is not by way of execution following the express bar in Order 29 Rule 2 of the Civil Procedure Rules and Section 21 of the [Government Proceedings Act](#).
29. Accordingly, the prayer for execution is declined and dismissed.
30. I order that each party bear their own costs of this application which is procedural in nature.
31. Decree to issue.



32. As no execution can take place in these proceedings, this file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

