



REPUBLIC OF KENYA



George Miyare t/a Miyare & Company Advocates v Elsek (Miscellaneous Application E032 of 2024) [2025] KEHC 12115 (KLR) (16 June 2025) (Ruling)

Neutral citation: [2025] KEHC 12115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E032 OF 2024**

F WANGARI, J

JUNE 16, 2025

BETWEEN

GEORGE MIYARE T/A MIYARE & COMPANY ADVOCATES ADVOCATE

AND

OSMAN ERDINC ELSEK CLIENT

RULING

1. By a Notice of Motion Application dated 20/12/2022 brought under the provisions of Sections 51 (1) and (2) of the Advocates Act, Order 7 of the Advocates (Remuneration) Order, 1962 and Order 51 Rule 1 of the Civil Procedure Rules, the Advocate/Applicant sought for the following orders: -
 - i. That the Honourable Court be pleased to enter judgement for the Advocate/Applicant against the Client/Respondent in the sum of Kshs. 1,795,727/= as appears in the Certificate of Taxation dated 20.12.2022 together with interest at 14% per annum from 29.06.2022 until payment in full;
 - ii. Costs.
2. The grounds in support of the application are that the Applicant delivered his Bill dated 28.3.2022 to the Respondent on 29.5.2022 and it elicited no settlement. On 9.12.2022, the Taxing Officer (Hon. J.M. Nyariki (DR) delivered a ruling on the Advocate – Client bill of costs herein taxing it at Kshs. 1,795,727/=. Consequently, a certificate of taxation was issued dated 20.12.2022 and the same was accordingly served on the Respondent.
3. The Taxing Officer’s decision and the Certificate of Taxation have not been set aside and or varied by the Honourable Court or at all. Meanwhile, the Respondent has neglected, failed and or refused to settle the taxed costs despite entreaty therefore. Accordingly, it is the Applicant’s position that it is fair and just to have the application allowed as prayed to facilitate realization of costs awarded to him.



4. The application is supported by an affidavit of even date sworn by the Applicant. The basis of taxation is Mombasa Magistrate Court Criminal Case No. 1509 of 2016; *Republic v Osman Erdinc Elsek*. Other than the annexures, the affidavit restates more or less the grounds in support of the application and I see no need to rehash the same.
5. The application is opposed. Through grounds of opposition dated 16.10.2024, the Respondent aver that the application is bad in law and an abuse of process of law. That the application is brought on a provision of the law which is not applicable. That when the court delivered its ruling on 9.12.2022, it became functus officio on the matter.
6. That the court file before the court is for taxation of Advocate – Client Bill of Costs and Judgement cannot be entered on this file after taxation and lastly, that there is no provision provided for the prayers sought under the Advocate Remuneration Rules.
7. Directions were taken to have the application canvassed by way of written submissions. Both parties duly complied with the directions. The Applicant’s submissions are dated 5th November, 2024. The Applicant has cited section 51 (1) and (2) of the *Advocates Act* as well as various authorities among them *Musyoka Wambua Advocates v Rustam Hira Advocate* [2006] eKLR.
8. On the part of the Respondent, his submissions are dated 8th November, 2024. They have equally cited various authorities among them *Abmednasir Abdikadir & Company Advocates v National Bank of Kenya Limited* [2006] eKLR.
9. I am grateful to the parties for complying with the court’s directions. I equally commend the industry they have exhibited by filing well researched submissions and citing various authorities which are a useful guide in determining the matter either way. I have given due consideration to both sets of submissions.

Analysis and Determination

10. Having carefully considered the application, the grounds of opposition, submissions for and against, the authorities cited as well as the law, I discern the following being the issues for determination: -
 - a. Whether judgement ought to be entered as prayed; and
 - b. What is the order as to costs?
11. The legal basis of the application is section 51 (1) and (2) of the *Advocates Act* and Order 7 of the Advocates (Remuneration) Order, 1962. Section 51 (1) and (2) of the *Advocates Act* provides as follows: -
 - “(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.”



12. On the other hand, Rule 7 of the [Advocates \(Remuneration\) Order](#) provides thus: -
- “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.”
13. Having carefully considered the respective parties’ written submissions, it was clear that the Certificate of Costs that was issued by the Taxing Officer had not been set aside and/or altered.
14. In [Republic v City Council of Nairobi; Ivyland Park Ltd \(Interested Party\) Ex parte Inderpal Singh & 2 others Suing as Officials of Convent Drive South Residents’ Association](#) [2021] eKLR, the court held as follows: -
- “... It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer...”
15. In addition, Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14% until payment in full. However, it is important to point out that 14% runs from the time the bill is delivered. Not from the time the certificate of taxation is issued. It is not in dispute that the Bill of Costs dated 3.8.2021 was delivered to the Respondents on 16.8.2021. In terms of Rule 7, it started attracting 14% interest from 16.9.2021 being thirty (30) days after the delivery of the Bill.
16. The Respondent was represented by Counsel in the criminal case subject of taxation and therefore, I have no hesitation to hold that the amount attracted 14% interest as from 29.6.2022, being thirty (30) days after delivery of the bill to the Respondent. Lastly, from the Respondent’s submissions, one of the objections raised is that there was no compliance with section 48 of the [Advocates Act](#).
17. In the case of [MG Sharma v Uburu Highway Development Limited](#) [2001] eKLR, the Court of Appeal clearly explained the applicability of section 48 of the Act in matters recovery of costs.
18. Once an advocate approaches court by way of a miscellaneous application for purposes of recovering his or her costs, the rigors of section 48 of the [Advocates Act](#) are avoided and I thus find the Respondent’s arguments on this limb not merited.
19. I think I have said enough to show that the application dated 20th December, 2022 has merits and the same is for allowing.
20. On costs, it is settled that the same follows the event. However, the court retains discretion whether to grant them or not. Furthermore, this discretion must be exercised judiciously and courts should not deprive a plaintiff/defendant of his or her costs unless it can be shown that they acted unreasonably.
21. The [Halsbury’s Laws of England](#), 4th Edition (Re-issue), [2010], Vol.10. para 16, notes as follows: -
- “The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”



22. The Applicant has been made to defend and prosecute one application after another and I see no reason to deny him costs. In the circumstances, I award costs to the Applicant
23. Having found the application successful, the following orders flow therefrom:
- a. The Notice of Motion dated 20th December, 2022 has merit and the same is allowed in the following terms:
 - i. Judgement in entered in favour of the Advocate/Applicant against the Client/ Respondent in the sum of Kshs. 1,795,727/= as appears in the Certificate of Taxation dated 20.12.2022.
 - ii. The sum in (i) above shall attract interest at the rate of 14% per annum from 29.6.2022 until payment in full.
 - b. Costs to the Applicant.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 16TH DAY OF JUNE, 2025.

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F. WANGARI

JUDGE

In the presence of:

Mr. Miyare Advocate for the Applicant

Mr. Aziz p.i.p for the Respondents

Ms. Getrude, Court Assistant

