



Mbai Waweru Advocates v Kenya Alliance Insurance Company Ltd (Miscellaneous Application E388 of 2022) [2025] KEHC 8248 (KLR) (Civ) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E388 OF 2022

TW OUYA, J

JUNE 12, 2025

BETWEEN

MBAI WAWERU ADVOCATES APPLICANT

AND

KENYA ALLIANCE INSURANCE COMPANY LTD RESPONDENT

RULING

1. The Notice of Motion Application before the Court dated 25th March 2024 is premised under the provisions of Section 51(2) of the *Advocates Act*, Rule 7 of the Advocates Remuneration Order and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Applicant is seeking the following Orders from this Court:
 - “a. That judgement be entered for the Applicant Advocate against the Respondent for the sum of Kshs. 128,741 together with interest thereon at 14% per annum from the date of Taxation (21st Day of March 2023) till payment in full as prescribed in paragraph 7 of the Advocates Remuneration order.
 - b. That judgement should be entered in favor of the Applicant for the taxed costs with interest at 14% per annum from the date of Taxation (21st March 2023) till payment in full.
 - c. That the costs of this Application be borne by the Respondent.”
3. The instant application is anchored on the grounds set out on the face thereof and in the Supporting Affidavit sworn by Timothy Kairu Waweru on 25th March 2024 in his capacity as an Advocate working



in the Applicant firm. The deponent stated that he was retained by the Respondent to act for it in a civil suit being Nairobi RMCC No. 3998 Of 2008 Peter Namutala Wanyala v Godfrey Wainaina Mugiri & others. The Applicant deposed that it filed and served the Advocate-Client Bill of costs herein upon the Respondent.

4. That the Applicant's Bill of Costs was taxed by the Taxing Master on 21st March 2023 at Ksh.128,741.00 and a Certificate of Taxation issued on 8th November 2023 which was forwarded to the Respondent on 29th February 2024. Furthermore, the Certificate of Taxation dated 8th November 2023 has not been challenged and is not under challenge in the subject proceedings.
5. The suit was dispensed by way of written submissions.

The Applicant's Submissions

6. The Applicant filed written submissions dated 28th August 2024 through its Counsel and submitted on a single issue for resolution by the Court namely, whether this Court can allow the Application as prayed with consideration of the attendant Supporting Affidavit therein.
7. It was submitted that the Certificate of Costs dated 8th November 2023 ought to be converted into a Judgment of this Court so that the Applicant firm can proceed to realize the amounts stated therein. Reliance was placed on the provisions of Section 51 of the *Advocates Act* as well as the holding of the Court in the cases of Rubo Kimnetich Arap Cheruiyot v Peter Kiprop Rotich [2006] eKLR.
8. Citing the reasoning of the Court in the case of Amondi & Co. Advocates V County Government of Kisumu [2022] eKLR, the Applicant subscribed to the position that once a Certificate of Costs is issued and no reference is filed against the same and the Certificate of Costs in question is not set aside an/or altered, it follows that no other action is required save for entry of that Certificate of Costs as a Judgment of the Court.

Issues for Determination

9. Upon careful consideration of the pleadings and supporting documents availed before the Court, the issues for determination are: Whether the Applicant is entitled to the orders sought and Who shall bear the costs of the Application.
10. Section 51 of the *Advocates Act* stipulates 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 of that judgement be entered for the sum certified to be due with costs.
11. In the case of Otieno Ragot & Co. Advocates v Kenindia Assurance Co. Ltd [2020] KEHC 8166 (KLR) which was relied upon by the Applicant in its written submissions the Court proclaimed as hereunder:

“And as long as the Certificate of Costs or the Certificate of Taxation has not been varied or set aside, the sums thereon certified are final.”



12. Similarly, in the case of Lubulellah & Associates Advocates v N. K. Brothers Limited [2014] eKLR, the Court observed that:

“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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”

13. In the subject suit, from perusal of the Court record, this Court is satisfied that the Ruling by the Taxing Officer dated 21st March 2023 is uncontested as the Respondent has not moved any competent court by way of filing a Reference against the ruling nor has the Ruling been set aside, altered, varied and / or reviewed, nor has any appeal been filed.

14. In the circumstances, the Court holds and finds that no other action is required from this Court save to adopt the order and enter to judgment as prayed against the Respondent.

15. Turning to issue of interest, the Applicant sought an award of interest at the rate of 14 percent per year as from 21st March 2023 until payment in full.

16. Paragraph 7 of the Advocates Remuneration Order provides as follows:

“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.”

17. In the case of Otieno Ragot & Co Advocates v Kenindia Assurance Co. Ltd [2020] eKLR, the Court dealt with the issue of interest in the following terms;

‘In my understanding, Rule 7 stipulates that interest is chargeable at 14% per annum, from the expiration of one month from the delivery of the bill to the client. It therefore follows that there is a reference point, from when interest is calculable. It cannot accrue before one month has expired, from the time when the bill is delivered to the client.

18. In the case of Jackson Omwenga & Co. Advocates v Everest Enterprises Ltd, Nbi Misc. Application No. 96 OF 1996, the Court declares 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.”



19. The Court holds and finds that Applicant herein is entitled to interest on the taxed amount at the rate of 14 percent per annum from 30th March 2024 being 30 days from the date when the Applicant served the Certificate of Costs in question upon the Respondent.
20. Having recourse to the foregoing, the Court shall proceed to make the following Final Orders:
- a. The Certificate of Costs dated 8th November 2023 is hereby converted into a Judgement and decree of this Court in the amount of Kshs. 128,741.00/-
 - b. Interest is awarded to the Applicant at the rate of 14% per annum, with effect from 30th March 2024 until payment in full.
 - c. Each party to bear own costs.

It is so Ordered.

DATED, SIGNED AND DELIVERED ELECTRONICALLY ON 12TH JUNE, 2025.

HON. T. W. OUYA

JUDGE

