



REPUBLIC OF KENYA



Ng'ang'a Munene & Company Advocates v Kimaru (Miscellaneous Civil Case E013B of 2023) [2025] KEHC 8896 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
MISCELLANEOUS CIVIL CASE E013B OF 2023
AK NDUNG'U, J
JUNE 20, 2025**

BETWEEN

NG'ANG'A MUNENE & COMPANY ADVOCATES APPLICANT

AND

ANTHONY MUTAHI KIMARU RESPONDENT

RULING

1. Ng'ang'a Munene & Co. Advocates (hereinafter, the Applicant) moved this court vide a Notice of Motion dated 5/6/2024 seeking the following orders:-
 - i. That the judgment be entered for Kshs 286,523.0 with interest at court rates in favour of the applicant against the respondent as per the certificate of costs herein and a decree do issue accordingly.
 - ii. That the cost of this application be provided for.
2. The application is supported by an affidavit sworn by Anthony Mwangi Ng'ang'a the gist of which is that the firm of Advocates was issued with a certificate of costs on 27th November 2023 consequent to taxation of the Advocate's/Client bill of costs herein. The certificate is annexed.
3. It is deponed that the respondent has not settled the amount on the certificate of costs or any part thereof and that it is just that judgment be entered and a decree do issue accordingly to facilitate execution.
4. The respondent opposed the application based on the following grounds:-
 1. That the applicant does not disclose any reasonable grounds for order.



2. That during taxation it was found that the client respondent has paid an amount of Kshs 1,397,000/= as legal fee for files in his replying affidavit, among them the instant file. Attached is a copy of the ruling marked as 'A1'.
 3. That the amounts in this file have been fully settled as per the attached schedule of apportionment of the payments of Kshs 1,397,00/= marked 'A2'.
 4. That the said payments have not been apportioned to any other taxed fees.
 5. That the applicant's assertion in his application ground number (2) that the respondent has not settled the certificate of costs or any part thereof is a nullity and not true.
 6. That the applicant filed a schedule in the environment and land court at Nyeri indicating that payments made by the respondent/client were for among other matters this case. Attached is the schedule marked as 'A3'.
 7. That the taxing matter at Nyeri ELC apportioned the payments made by the client/respondent to the Nanyuki matters including this matter as she did not apportion any amount to the Nyeri matters Nyeri ELC 36/2010 and Nyeri Petition 5/2016. Attached is the ruling marked as 'A4.'
 8. That the said Nyeri matters have since been settled. Attached are the decrees and acknowledgments marked as 'A5', 'A6' and 'A7.'
 9. That the applicant's prayer for judgment to be entered for Kshs 286,523.0 with interest at court rates in his favor is both unconscionable and unequitable having already received the full fees.
 10. That the applicant is not entitled to his prayers and that the court should so find.
5. The application was canvassed by way of written submissions.
 6. Having reviewed the Application dated the 5th June 2024, the supporting affidavit thereto and the Grounds of opposition filed by the Respondent; and upon considering the submissions tendered on behalf of the respective Parties, the following issues do arise and are worthy of determination;
 - i. Whether the Applicant herein is entitled to Judgment in terms of Section 51(2) of the *Advocates Act*, Chapter 16, Laws of Kenya.
 - ii. Whether the Applicant is entitled to Interest and if so, the rate of Interests to be applied.
 7. A cursory look at the application and the response thereto shows a misapprehension on 2 applications of distinct nature under the *Advocates Act*. These are an application under Section 51(2) of the *Advocates Act* (indeed the application now before court) and an Application under Paragraph 11 of the *Advocates Remuneration Order*.
 8. At the earliest, it is important to put these 2 applications in perspective and draw the necessary distinction. Under Section 51(2) of the Act it is provided;

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court shall 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. Under Paragraph 11 of the *Advocates Remuneration order*, it is provided as follows;



- a. (1)Should any party object to the decision of the taxing officer , he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - b. (2)The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the Objector may within fourteen days from the receipt of the reasons apply to a Judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
10. In this matter, it is evident that upon the delivery of the taxing master’s ruling, no such reference as envisaged under paragraph 11 was ever filed or lodged, whatsoever.
 11. From the foregoing observation, the certificate of taxation which was issued on the 27th November 2023, has neither been challenged, varied, set aside or rescinded.
 12. For an application under Section 51 to succeed, the retainer must not be in dispute. In the instant matter, it is not lost on the court that the issue of retainer is not in dispute. For the avoidance of doubt, the Respondent herein has readily admitted the retainer and the Advocate/ Client relationship is thus not contested.
 13. So has the Applicant satisfied the requisite provisions of Section 51(2) of the Advocates Act to warrant entry of Judgment in terms of the certificate of taxation?.
 14. My reading and understanding of the said provisions drives me to the conclusion that there are two hurdles that must be surmounted by an Applicant before Judgment can be entered in terms of the certificate of taxation.
 15. Firstly, the Applicant is obliged and obligated to satisfy the Honourable court that there was indeed retainer. I have addressed this issue earlier and found that retainer is not contested.
 16. In Ochieng, Onyango, Kibet & Ohaga Advocates v Adopt a Light Limited [2007] eKLR, the court addressed the importance of proof of retainer in an application of this nature and stated;

“There is no doubt that the applicant was instructed by the respondent and in furtherance of that instructions offered some services to the respondent. I am therefore in agreement with the applicant that there is no requirement under section 51(2) of the Advocates Act that a retainer ought to be in writing and that it must be exhibited in an application like the present one before the Advocate can be entitled to judgement. The only hurdle under section 51(2) of the Advocates Act is whether there is proof of retainer by the Advocate and whether retainer is disputed. In the case before court, retainer is not disputed by the respondent, therefore the applicant has comfortably passed the pre-requisite test imposed by the statute in order to grant judgement in favour of an Advocate”.
 17. Secondly, an Applicant is enjoined to prove that the certificate of taxation upon which Judgment is sought, has neither been reviewed, varied or otherwise rescinded.
 18. No reference was filed within the stipulated time to challenge the ruling on taxation. The certificate of taxation which was issued on the 27th November 2023, has not been varied or rescinded, in accordance with the law.
 19. Accordingly the Applicant has satisfied the second limb/hurdle underscored vide the provisions of section 51(2) of the Advocates Act.



20. The Court in *Ochieng, Onyango, Kibet & Ohaga Advocates v Adopt a Light Limited* (*supra*) put it thus;

“Section 51(2) of the *Advocates Act* gives an Advocate the opportunity to benefit from the discretionary powers of the court where he has satisfied the requirement and precedent conditions set out in that section. In my view an Advocate who has passed the hurdle provided under Section 51(2) is automatically entitled to judgement. In this case the certificate of costs obtained by the applicant is final since the respondent was unsuccessful in its challenge to set aside or vary the amount contained in the said certificate. Secondly there is no dispute as to retainer, therefore in my judgement, the applicant has fulfilled the conditions set out under section 51(2) of the *Advocates Act*, hence it is incumbent upon this court to do the necessary. In my view where an Advocate has fulfilled the conditions set out under Section 51(2) of the *Advocates Act*, the court has no discretion but an obligation to enter judgement as prayed. It is therefore my judgement that this court has no discretion since the applicant has brought itself within the clear and express provisions of the said section. In the premises I am persuaded to enter judgement as prayed in the application.”

21. From the foregoing, it is manifestly clear that the Applicant has surmounted the legal requirements for the entry of judgement in terms of the certificate of taxation. For clarity, it must be borne in mind that it is not open for the Respondent to challenge the amount taxed as payable at this stage. The window was long closed when no reference was filed.

22. As to whether interest should be awarded as prayed, Paragraph 7 of the *Advocates Remuneration Order* provides;

“An Advocate may charge interest at 14% 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 such a claim for interest is raised before the amount of the bill has been paid or tendered in full.”

23. A reading of this rule leaves no doubt that an Advocate is at liberty to charge Interest at 14% per annum on costs and disbursement, provided however that such a claim for Interests is raised before the amount of the bill has been paid or tendered in full. This interest is chargeable after the expiration of one month from the date of the delivery of the bill to the client. In our instant case, it is not established when the bill was served on the client if at all and for their own reasons, the Applicant has sought interest at court rates. I award interest at court rates to run from date of this ruling.

Consequently, the application dated 5/6/24 succeeds in its entirety and is allowed. I make the following orders;

- i. That judgment be and is hereby entered for Kshs 286,523.0 with interest at court rates in favour of the applicant against the respondent as per the certificate of costs herein and a decree do issue accordingly.
- ii. Interest to run from the date of this ruling.
- iii. The Applicant shall have the costs of this application certified at Kshs 15,000.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 20TH OF JUNE 2025.

A.K. NDUNG’U

JUDGE

