



**Mwamu t/a Mwamu & Company Advocates v County
Government of Nairobi (Miscellaneous Application 1065 of 2020)
[2025] KEHC 12604 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 1065 OF 2020**

F GIKONYO, J

JULY 31, 2025

BETWEEN

**JAMES AGGREY MWAMU T/A MWAMU & COMPANY
ADVOCATES APPLICANT**

AND

THE COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. The applicant represented the respondent in the Supreme Court of Kenya Petition No. 37 of 2020. It subsequently filed an advocate-client bill of costs dated 25th June 2020 for Kshs. 91,620,844.30/-, which parties agreed to be settled as per the terms of the consent recorded in court on 5th May 2021.
2. The applicant/ advocate filed the notice of motion dated 5th November 2024, seeking entry of Judgment in accordance with the consent order of 5th May 2022. That Judgment be entered in the sum of Kshs. 25,440,440/- together with interest of Kshs. 10,684,984.80/-, making a total of Kshs. 36,125,474/-. That the said amount attracts interest at 14% from 5th May, 2021, till payment in full.
3. The application was brought under section 1A, 1B and 3A of the *Civil Procedure Act*, section 51(2) of the *Advocates Act* and rule 7 of the *Advocates (Remuneration) Order*, order 51 of the *Civil Procedure Rules* 2010 and article 150 of the *Constitution*.
4. The application is premised on the grounds outlined in the body of the application and the annexed affidavit sworn by James Aggrey Mwamu on 5th November 2024. The applicant also filed written submissions dated 17th February 2025.
5. The grounds are that:-



1. The respondent has rejected, neglected and profusely refused to settle the outstanding amount.
2. The costs have already been taxed in the sum of Kshs. 39,000,000/-
3. The respondent has paid Kshs. 19,000,000/-, leaving a balance of 25,440,440/- together with interest of Kshs. 10,684,984.80/-, making a total of Kshs. 36,125,474/-.
4. It is in the interest of justice that this application be allowed.
5. That the court should grant interest per the *Advocates' Remuneration Order*.
6. The respondent opposed the application through a replying affidavit sworn by its legal officer, 6th February 2025 and written submissions dated 28th April 2025.
7. The deponent averred that:-
 1. The consent entered between the applicant and respondent was for payment of KES. 34,000,000/- all including VAT, and in full and final settlement.
 2. It has partially complied with the consent by paying Kshs. 19,000,000, in two instalments of:-
 - a. KES 14,000,000/- on 28th February 2022.
 - b. KES 5,000,000/- on 16th December 2022.
 3. There is a balance of KES. 15,000,000/- only
 4. The consent had no provision of 14% interest per annum. It is therefore unfair for the applicant to indicate that the agreed amounts have accrued an interest of Kshs.10,694,984.80/- yet there is no pronouncement on the issue of interest or when the interest should even start running.

Analysis and Determination

8. It is not contested that on 5th May, 2021, the taxing officer recorded and adopted a consent dated 13th April 2021, in the following terms:-

“By consent

The Bill of cost dated 25th June 2020 be marked as settled in the following terms:-

 1. The Respondent shall pay the applicant a sum of Kshs. 34,000,000/- (Thirty Four Million Shillings) plus VAT by way of three (3) equal instalments payable as follows:-
 - a. 1st instalment sum payable to the Applicant on or before 30th September 2021.
 - b. 2nd instalment sum payable on or before 31st December 2021.
 - c. 3rd instalment sum payable to the Applicant on or before 31st March 2022.
9. It is also not contested that the respondent has partially paid Kshs. 19,000,000/-.
10. The issues in dispute are whether the Kshs. 34,000,000/- payment was inclusive of VAT or not, and whether the said amount attracts interest at 14% from 5th May, 2021, till payment in full.



VAT inclusive?

11. On the first issue, the applicant argued that the consent was clear that the amount was not inclusive of VAT, from the use of the term ‘plus’ VAT.
12. In my view, the phrase ‘plus VAT’ means that the amount of Kshs. 34,000,000/- is exclusive of VAT.
13. I reject the respondent’s propositions that the amount was exclusive of the VAT and that there is no basis for the applicant’s claim for VAT.

Interest

14. The applicant sought interest of 14% from 5th May, 2021, till payment in full. He relied on Rule 7 of the *Advocates’ Remuneration Order* to argue that he is entitled to interest. He also relied on *Amondi & Co. Advocates v County Government of Kisumu* 2021 eKLR and *Makbecha & Company Advocates v Central Bank of Kenya* Misc Application No. 296 of 2021.
15. On the other hand, the respondent argued that the applicant is not entitled to interest because he introduced the issue of interest in the instant application. That the parties did not agree to include interest as a term of the consent agreement. That interest was not factored by the taxing officer. That, therefore, the prayer for interest is unjustifiable and without basis in law.
16. The respondent challenged the applicant’s claim for payment of interest amounting to Kshs. 10,684,984.80/- based on a principal amount of Kshs. 25,440,440/-. It contended that even if interest was to be paid, the same should start running from 5th November, 2024, being the date when the applicant first raised the issue. Accordingly, the respondent argued that the interest would be Kshs. 4,900,000/- 14% of the outstanding amount of Kshs. 15,000,000/-.
17. The respondent relied on *Anthony Thuo Kanai t/a A.Thuo Kanai Advocates v Talwar* (Civil Appeal 226 of 2018) [2023] KECA 151 (KLR).
18. Rule 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”
19. In *Anthony Thuo Kanai t/a A.Thuo Kanai Advocates v Talwar* [*supra*] the Court of Appeal noted that:-

“the actual relationship of the parties, the demand for payment, and the behaviour of the parties after such demand, were relevant factors for consideration in determining whether to allow a claim for interest on taxed costs.”
20. The court notes that the terms of the consent were that the respondent would settle the costs in three instalments due on or before 30th September 2021, 31st December 2021 and 31st March 2022. Although respondent has partially paid the agreed costs, it did not pay the instalments within the agreed timelines. It paid Kshs. 14,000,000/- on 28th February 2022 and Kshs. 5,000,000/- on 16th December 2022.
21. The applicant produced letters dated 5th and 11th July 2023 asking them to honour payment. It also produced the notice dated 29th May 2024 requiring the respondent to pay.
22. Therefore, I am of the considered view that the applicant is entitled to interest.



23. 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 recovered thereby; and the court may make such order in relation thereto as it thinks fit, including where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

24. The respondent argued that to the extent that the applicant has never obtained a certificate of taxation, there is no basis for entry of judgment.

25. However, in *Wilfred Nyaundi Konosi t/a Konosi & Advocates v John Lokorio* [2015] KEHC 730 (KLR) JK Mulwa J. held:-

“That as long as the certificate of costs is unchallenged as is in this appeal, (a consent certificate of costs having been recorded on a Reference) there can be no valid defence challenging the validity or otherwise of the certificate of costs, more so where the certificate was obtained by consent of both parties.” Emphasis added

26. As earlier noted, there is no dispute that the parties compromised the bill of costs through a consent dated 13th April 2021 and that the taxing officer recorded and adopted the said consent on 5th May, 2021.

Disposal

27. In the upshot, the application dated 5th November 2024, is allowed in the following terms:-

1. Judgment is entered in favour of the applicant/advocate against the respondent/client in terms of the consent recorded in court on 5th May 2021 for:-
 - i. Outstanding costs of Kshs. 15,000,000/-
 - ii. Outstanding VAT of Kshs. 5,440,440/-
 - iii. Interest on (i) at 14% from 5th November 2024 till payment in full.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 31ST DAY OF JULY 2025

F. GIKONYO M

JUDGE

In the presence of: -

Mwamu for applicant

N/A for respondent

Kinyua C/A

