



Otieno t/a Omondi Otieno Associates Advocates v Elyco Motors Limited (Commercial Miscellaneous Application E011 of 2025) [2025] KEHC 10857 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10857 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL MISCELLANEOUS APPLICATION E011 OF 2025**

A MABEYA, J

JULY 25, 2025

IN THE MATTER OF TAXATION OF ADVOCATE CLIENT BILL OF COSTS

BETWEEN

**BRIAN OTIENO T/A OMONDI OTIENO ASSOCIATES
ADVOCATES APPLICANT**

AND

ELYCO MOTORS LIMITED RESPONDENT

RULING

1. By a Motion on Notice dated 19/6/2024, the Advocate applied for Judgment for Kshs. 205,716/- against the respondent. The Motion was brought under section 51 of the Advocates Act, Cap 16 Laws of Kenya.
2. The basis for the Motion was that it was in terms of a Certificate of Costs dated 30/5/2025. The Advocate also sought interest at the rate of 14% per annum from 7/4/2025 until payment in full.
3. In the Supporting affidavit sworn by Brian Otieno on 9/6/2025, it was contended that the Advocates fees became due on 7/4/2025 which was 30 days from the date when the bill was delivered to the client.
4. The said bill of costs was taxed on 12/6/2024 and a Certificate of Costs for Kshs.205,716/- was issued on 30/5/2025. That it was imperative that Judgment be entered in terms thereof to enable the Advocate recover his costs.
5. I have considered the record. I have also considered the oral submissions of Mr. Onyango and Mr. Otieno. I have seen a copy of the Certificate of Costs dated 29/5/2025. It is for Kshs.205,716/-.



6. Section 51(2) of the *Advocates Act* provides: -

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.”

7. From the foregoing, it is clear that an Advocate is entitled to judgment on the amount certified after a taxation of an advocate-client bill of costs. That certificate must not have been varied or set aside. The application was not opposed by way of Replying Affidavit but by way of a Motion on Notice dated 5/6/2025 and submissions. In that Motion, it was alleged that a sum of Kshs.107,000/- had been paid and should have been deducted from the Certificate.
8. Firstly, that Motion was in the nature of a challenge to the taxation of the bill of costs. That is not the procedure. Although the client applied for the reasons of the taxation vide a letter dated 3/6/2025, it never filed a reference thereto as required under Rule 11 of the Advocates (Remuneration) Order.
9. Secondly, even if that Motion was to be deemed to be a reference, there was no particular and specific evidence to show that a sum of Kshs.107,000/- had been paid to the Advocate on the subject matter for it to be deductible from the Certificate of taxation. What was produced was a Statement of Account which was not explained in the Supporting Affidavit of Elly Otieno Amula sworn on 5/6/2025.
10. Accordingly, the Motion dated 5/6/2025 was fatally defective and is for striking out which I hereby do. As regards the Motion of 9/6/2025, the same is unopposed. If there is any evidence of such payment of Kshs.107,000/-, the same can be presented to Court in a proper way and will be taken into account when preparing the decree of the Judgment.
11. On the 14% interest, this is awardable from 30 days after service of a fee note by an advocate upon his client. In this case, it was contended and was not denied that the bill of costs had been delivered 30 days before the 7/4/2025. The Court will therefore deem that to be the date when the costs of the Advocate began accruing interest. In this regard, the time for interest will run from 7/4/2025.
12. Accordingly, I allow the application. Judgment is entered for the applicant/advocate against the respondent/client for Kshs.205,716/- together with interest at 14% p.a from 7/4/2025 until payment in full.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

