



Prof Tom Ojienda & Associates v County Government of Nairobi (Miscellaneous Application E221 of 2020) [2025] KEHC 10288 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION E221 OF 2020**

**TW OUYA, J
JULY 17, 2025**

BETWEEN

PROF TOM OJIENDA & ASSOCIATES APPLICANT

AND

COUNTY GOVERNMENT OF NAIROBI CLIENT

RULING

1. The Applicant moved this honourable court via a Notice of Motion dated 27th September 2023 brought under Section 51 (2) of the *Advocates Act* for orders that:
 - i. This honourable court be pleased to enter judgment for the Applicant against the Respondent for the sum of Kshs 1,002,268.50/= (Kenya Shillings one million, two thousand, two hundred and sixty-eight and fifty cents only) as appears on the certificate of Taxation dated 13th September 2023 with interest from the date of Ruling on Taxation until payment in full.
 - ii. The applicant be allowed to execute the judgment herein against the Respondent, the County government of Nairobi.
2. The Application is premised on the grounds on the face of the application and the Supporting affidavit of Prof Tom Ojienda, SC of even date made in support of the application. Therein he states that the Applicant filed an advocate client Bill of Costs dated 14th July 2020 arising out of a court judgment in HCCC Case No 365 of 1997; NACICO Cooperative Society v The Town Clerk Nairobi City, where the Applicant defended the interests of the Respondent.
3. The Respondent failed to pay the legal fees arising from the services rendered thereby necessitating the filing of the Bill of Costs; which was taxed and a Certificate of Taxation issued. The Respondent has failed and/or neglected to settle the taxed costs.



4. In the instant application the Applicant seeks that the Certificate of Taxation be adopted as an order and judgment of this court. The application was uncontested as the Respondent failed and or neglected to file any response despite service having been effected.
5. The Applicant prayed that judgment be entered as prayed for the sum of Kshs 1,002,268.50/= together with interest thereon. The Applicant also prayed to be allowed to execute the judgment against the Respondent.
6. Upon considering the application herein, the supporting affidavit and the submissions by the Applicant. The issues that commend themselves for consideration are:
 - i. Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs 1,002,268.50/=
 - ii. Whether the applicant should be awarded interests on the taxed costs; and
 - iii. Whether the applicant should be allowed to execute against the Respondent
7. 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 recovered thereby; and the court may make such orders 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.”
8. It is therefore not in doubt that the advocate would be entitled to apply for entry of judgment on the certificate of taxation where the certificate of taxation has not been set aside, where there is no dispute as to retainer and finally, where there is no pending reference filed by the respondent.
9. Therefore, the court needs to be satisfied that the Certificate of Taxation has not been set aside while determining whether to adopt the amount on the Certificate of Taxation.
10. In *Lubullellah & 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.”
11. In the instant case, no reference has been filed challenging the certificate of taxation which is sought to be adopted as judgment on costs and no issue has been raised as to retainer. This court is therefore satisfied that the Certificate of Taxation dated 13th September 2023 is uncontested.
12. Accordingly, I hereby enter judgment for the applicant advocate on the taxed costs of Kshs 1,002,268.50 as per the certificate of taxation dated 13th September 2023.
13. Regarding the interests on the taxed costs. Rule 7 of the *Advocates Remuneration Order* provides that:

“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.”

14. The above rule stipulates that such claim for interest must be raised for it to start to accrue after the expiration of one month from the delivery of the bill to the client. In the case of *Kerongo & Company Advocates v Africa Assurance Merchant Co. Limited* [2019] eKLR the court held:

“An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the Advocates Remuneration Order. As the advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum.”

15. The above position and interpretation of Rule 7 of the *Advocates Remuneration Order* was also stated as follows by Mabeya J in *Kitih & Company Advocates v Menengai Downs Limited* [2015] eKLR, persuasively:

“I will start with interest. There seems to be a misconception by legal practitioners on the award of interest on taxed costs. An Advocate is entitled to interest on the amount taxed on an Advocate/client Bill of Costs. The rate of interest awardable is 14% per Annum applicable from 30 days after the date of service of either the Block Fee Note or the Bills of Costs. This is clearly set out in Rule 7 of the Advocates Remuneration Order which provides.”

16. In view of the foregoing, once a judgment is entered on a certificate of costs, the decretal amount is liable to attract interest of 14% per annum from 30 days after the service of the bill and not the date of taxation. For an Advocate to be able to recover this, there must be evidence on record on the date when the bill was served upon the client.

17. In *Jackson Omwenga & Co. Advocates v Everest Enterprises Ltd* [2017], L. Njuguna J, remarked 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.”

18. From a perusal of the record, there is no evidence that the Applicant ever served the Respondent with any document making a claim for interest. Therefore, in line with Rule 7, the Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent.



19. In *Prof Tom Ojienda & Associates v County Government of Nairobi* (Judicial Review Miscellaneous Application E027 of 2020) [2025], the court observed thus:

“20. Under the cited Rule 7 of the Advocates Remuneration Order, to lawfully claim the 14% interest, or any part thereof, on the taxed bill of costs, the advocate must:

- a. Serve the itemized bill of costs to the client,
- b. Explicitly include a demand for interest at 14% in the bill, and
- c. Wait for 30 days to lapse after service before interest begins to accrue.

21. If the advocate fails to include the interest demand in the bill, then:

- a. The Taxing Officer lacks jurisdiction to award that interest during taxation; and
- b. The Court cannot include interest in the certificate of taxation or any resulting judgment adopting the certificate of costs.”

20. In the case of *Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd* (Civil Appeal 129 of 2019), [2023] KECA the Court of Appeal addressed this issue of whether an advocate can claim interest on taxed costs when no prior demand was made before filing the bill of costs. The court held that an advocate cannot charge the 14% per annum interest under Rule 7 of the Advocates Remuneration Order without notifying the client. The court emphasized that it was incumbent upon the advocate to put the client on notice that they intended to claim interest at the point at which the bill of costs was drawn. It follows that an advocate is barred from springing up a claim for 14% interest during taxation or judgment application if it was not demanded in the original bill served to the client. To hold otherwise would amount to procedural unfairness and violate the clear requirements of the Advocates Remuneration Order.

21. Accordingly, the prayer for interest to start accruing on the costs is found to be devoid of merit and is therefore disallowed.

22. Regarding the prayer for execution against the Respondent, the procedure with regard to execution of decrees against the Government is stipulated in the *Government Proceedings Act*. Section 21 states as follows:

“Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.”



23. Section 21 (4) of the *Government Proceedings Act* prohibits execution against the Government. It provides that:

“Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, and no person shall be individually liable under any order for the payment by the Government or any Government department, or any officer of the Government as such, of any money or costs.”

24. It is clear that even though one may not pursue execution proceedings against the government per se, a party wishing to realize the fruits of a judgement against the government must first start by securing a certificate of costs and certificate of order against the Government as held in the case of *Republic v Principal Magistrate's Court at Mavoko & another Ex Parte Joseph Ole Lenku Governor Kajiado County & another* [2018] eKLR.

25. The next step would have been for the claimant to seek a writ of mandamus compelling the relevant officer in the county government of Nairobi to honour the decree as held in the case of Judicial Review Miscellaneous Application No 44 of 2012 between the *Republic v The Attorney General & another ex parte James Alfred Koroso* and the finding that:

“...In the present case the ex parte applicant has no other option of realizing the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized...”

26. In *Republic v Attorney General & another ex-parte Stephen Wanyee Roki* (2016) eKLR, the court observed that:

“Therefore, the law as it stands, no execution can be levied against the property of a Government and or a County Government in settlement of a decree in a civil case and hence the only recourse available to a decree holder is to apply for mandamus against the Chief Officer of the Government, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the Chief Officer if the order of mandamus is not complied with.”

27. Accordingly, the prayer for execution against the Respondent is premature. Accordingly, it is therefore declined and dismissed.

28. The upshot of the matter is that the Application is disposed in the following terms:

- i. The Certificate of Taxation dated 13th September 2023 is adopted as an order of the court
- ii. The prayer for interests on the taxed costs is dismissed
- iii. The prayer for execution against the Respondent is dismissed.
- iv. Each party to bear his costs
- v. Decree to issue

DATED, SIGNED AND DELIVERED ELECTONICALLY THIS 17TH JULY 2025.

HON. T. W. OUYA



JUDGE

