



REPUBLIC OF KENYA



T.Tum t/a Tum & Associates Advocates v Tanui (Miscellaneous Application Probate & Administration 9 of 2022) [2025] KEHC 10561 (KLR) (21 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10561 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION 9 OF 2022**

RN NYAKUNDI, J

JULY 21, 2025

**IN THE MATTER OF TAXATION OF AN ADVOCATE/CLIENT BILL OF
COSTS ARISING FROM ELDORET HIGH COURT SUCCESSION CAUSE
NO. 26 OF 2021 ESTATE OF KIPTO KIPTANUI THROUGH CHRISTINE
JEPKOECH TANUI**

BETWEEN

T.TUM T/A TUM & ASSOCIATES ADVOCATES ADVOCATE

AND

CHRISTINA JEPKOECH TANUI RESPONDENT

RULING

1. What is pending before me for determination is a Chamber Summons Application dated 29th June 2023 where the Applicant is seeking the following orders:
 - a. That the Advocate-Client bill of costs as between the Applicant and the Respondent be taxed and allowed by the taxing master of this court with respect to Eldoret High Court Succession Cause No. 26 of 2021 Estate of Kipto Kiptanui (deceased) through Christina Jepkoech Tanui.
 - b. Costs of this application be borne by the Respondents.
2. The Application is based on the grounds on the face of it where the Applicant states as follows:
 - a. The Applicant has been handling proceedings in the above mentioned matter on behalf of the Respondents after duly receiving instructions so to act.
 - b. The Client or the Respondents have neglected, refused and or ignored to pay the Applicant's legal fees in full and disbursement, despite being supplied with concise fee note.



- c. The Respondent ought to clear the fees owed to the counsel for the work put in on her behalf.
3. The Application is supported by the Annexed Affidavit dated 29th June 2023 sworn by T.Tum, the Applicant herein where he avers as follows:
 - a. That I am the Advocate in conduct of this matter thus competent to swear this Affidavit.
 - b. That the firm of M/s Tum & Associates Advocates was duly instructed by the Respondents to apply for the Grant of Letters of Administration suit on their behalf in the matter of Eldoret High Court Succession Cause No. 26 of 2021 Estate of Kipto Kiptanui (deceased) through Christina Jepkoech Tanui.
 - c. That it is incumbent as was mutually agreed that the Respondents would pay the Applicants legal fees and disbursements due and arising from the said suit.
 - d. That in the premises, it is fair, just and expedient that the Advocate-Client Bill of costs file herewith taxed and allowed to enable the Applicant gain costs and to recover the expenses incurred in conducting/handling the said matter.
 - e. That I swear this Affidavit in support of the facts deponed to herein above.

Analysis and Determination

4. I have carefully read and considered the Application by the Applicant and there is only one issue manifest for determination i.e. Whether the Application is merited.

Whether the Application is Merited

5. The *Advocates Act* provides for two (2) ways in which an applicant may recover its costs. These are under Section 48 and Section 51 (1) of the *Advocates Act*.
6. Section 48 of the *Advocates Act* provides as follows: -
 - (1) Subject to this Act no suit shall be brought for the recovery of any costs due to an advocates or his firm until after the expiry of one month after a bill of such costs, which may be in summarized form, signed by the advocate or partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause, to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to leave Kenya or abscond from the local limits of the Court's jurisdiction, in which event any action may be commenced before the expiry of the period of one month.
7. I take cognizant note that the principles of law applicable in relation to Advocate-Client Bill of Costs after the same has been taxed are clear. In this regard, 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 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.
8. Moreover, I am also guided by the case of *E. W. Njeru & Co v Zakhem Construction (K) Limited* [2013] KEHC 3376 (KLR) where the court held that:

I hold the view that once a taxing master has taxed the costs, issued a Certificate of costs and there was no reference against his ruling, no other action would be required save for entry



of judgment. An applicant is not required to file suit for the recovery of costs. I would agree with the learned judge that the certificate of costs is final as to the amounts of the costs. This court would therefore be in order to enter judgment in favour of the Applicant against the Respondent for the sum of Kshs 577,460/= as the Certificate of Costs issued on 23rd January 2013 was final as to that amount.

9. On interest chargeable by an advocate, Rule 7 of the Advocates Remuneration Order states as follows: -

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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.

10. I note that the Applicant herein opted not to file a suit for recovery of its costs as provided for under Section 48 of the *Advocates Act*. It applied for taxation of its Bill of Costs in accordance with Section 51(2) of the said Act.

11. Furthermore, this court has jurisdiction under Section 51(2) of the *Advocates Act* to make any order that it deems fit. Entry of judgment and award of interest at court rates is within the ambit of what this court can do. With this I am guided by the decision in the case of Andrew and Steve Advocates Vs Maureen Onsongo [2022] eKLR where the Court held that:

19. It is evident that Section 51(2) of the *Advocates Act* confer upon the court jurisdiction to make such order as it may deem fit in the matter before it and an order that judgment be entered for the sum certified to be due including costs.

12. In light of the foregoing, the application is merited and the same is allowed in terms of prayer (1)

13. There shall be no order as to the costs.

14. The file be transferred to the Deputy Registrar for Taxation of the Advocate-Client Bill of Costs.

15. It is so ordered

DATED AND SIGNED AT ELDORET VIA CTS THIS 21ST DAY OF JULY, 2025

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R. NYAKUNDI

JUDGE

