

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC CIVIL APPLICATION NO E111 OF 2023

KEMBOY LAW
ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

NAROK COUNTY GOVERNMENT
.....CLIENT/RESPONDENT

ARISING FROM

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT AT ELDORET
CIVIL SUIT NO. 954 OF 2018

RAEL JEMELI ROP.....PLAINTIFF

VERSUS

ISAAC KARIOKI.....1ST
DEFENDANT

NAROK COUNTY GOVERNMENT.....2ND
DEFENDANT

Coram: Before Justice R. Nyakundi
M/s Kemboy Law Advocates
M/s Maina Ngaruiya & Co Advocates

RULING

- 1.** What is pending before this Honourable for determination is a Notice of Motion Application dated 15th day of May 2025 premised under sections 51(2) of the Advocates Act and Rule 7 of the Advocates Remuneration Order 2009 in which the Applicant is seeking the following orders: -
 - a. That the Certificate of Taxation dated 6th February 2025 arising out of the taxation converted into a Judgment of the Court and a Decree emanating therefrom be issued accordingly.

- b. That the interests of the taxed be awarded at 14% per annum from 15th February 2024 until payment in full.
 - c. That costs be in the cause.
2. The Application is made on the following grounds on the face of it among others;
- a. That on the instructions of the Client/Respondent, the Advocate/Applicant acted in ELDORET CMCC No. 954 of 2018 between *Rael Jemeli Rop Vs Isaac Karioki & Narok County Government*.
 - b. That the Advocate-Client Bill of Costs dated 20th May 2023 was served on 26th January 2024. There is an Affidavit of service on record to that effect.
 - c. That the firm of Maina Ngaruiya & Company Advocates came on record for the Client on 26th February 2024 and thereafter proceeded to file and served the Client's notice of Preliminary Objection dated 19th February 2024 alongside Replying Affidavit of even date as well as composite Written Submissions dated 5th April 2024.
 - d. That the Advocate/Applicant equally filled and served its written submissions dated 4th April 2024 in support of the said Bill.
 - e. That the Advocate-Client Bill of Costs dated 20th May, 2023 in respect of the services rendered was on 6th February 2025 taxed as between Advocate and Client and allowed as against the Clients/Respondent in the sum of Kenya Shillings Two Hundred and Forty - Eight Thousand, Six Hundred and Thirty-Nine (Kshs. 248,639.00)
 - f. That the Advocate was supplied with the Certificate of Taxation on 3rd April 2025.
 - g. That pursuant to Rule 7 of the Advocates Remuneration Order, the Advocate is entitled to charge interest at 14% per annum, one (1) month from the date the Advocate served his Bill upon the Client, that is, from 15th February 2024 until payment in full.

- h. That nothing that the said sum is still due and outstanding, the interest therefore accrues on the certified costs from 15th February 2024.
 - i. That the said Certificate of Taxation has not been set aside or altered.
 - j. That it is apparent that there has been no dispute as to retainer.
 - k. That it is in the best interests of justice that the orders sought herewith be granted.
- 3.** The application is supported by the annexed affidavit dated 15th May 2025 sworn by Jepher K. Kere practicing in the firm of Kemboy Law Advocates whose averments echo the grounds supporting the application.
- 4.** The Application is unopposed as the Respondent has not filed any response despite being served as evidenced by an Affidavit of Service filed on record.

Analysis and Determination

- 5.** I have read and considered the Notice of Motion Application and the grounds supporting the application. There are two (2) issues for determination as follows:
- a. Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of sum of Kenya Shillings Two Hundred and Forty - Eight Thousand, Six Hundred and Thirty-Nine (Kshs. 248,639.00)
 - b. Whether the applicant should be awarded interests on the taxed costs

Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kenya Shillings Two Hundred and Forty -Eight Thousand, Six Hundred and Thirty-Nine (Kshs. 248,639.00)

- 6.** I take note that the Applicant has annexed a Certificate of Taxation dated 6th February 2025, confirming that the Advocate/Client Bill of Costs was

taxed at Kshs. 248,639.00. The Respondent has not filed any reference to challenge the ruling of the taxing officer delivered on 6th day of February 2025 nor has the Certificate of Taxation been varied or set aside.

7. The crux of this issue requires me to delve in section 51(2) of the Advocates Act. In particular, this section provides as follows;

“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. From the above provision, it is therefore clear that the advocate would have the right to request entry of judgment on the tax certificate in cases where the certificate has not been set aside, retainer disputes are resolved, and the respondent has not filed any pending references. Thus, in order for the application at hand to succeed or to be meritorious 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. With this I am guided by the decision in the case of **Lubulellah & Associates Advocates Vs N. K. Brothers Limited (2014) eKLR** where 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.”

9. From this instant case and looking at the face of the record, 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 6th February 2025 is uncontested. Therefore, in view of the discussed legal principles above, I hereby enter judgment for the Applicant/Advocate on the taxed costs of Kshs. 248,639.00 as per the certificate of taxation dated 6th day of February 2025.

Whether the applicant should be awarded interests on the taxed costs

10. This issue requires a reference to Rule 7 of the Advocates Remuneration Order which provides as follows:

“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.”

11. According to the aforementioned rule, a claim for interest must be made in order for it to begin to accrue one month after the client receives the bill. I wish to refer to the case of **Kerongo & Company Advocates Vs Africa Assurance Merchant Co. Limited [2019] eKLR** where 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."

- 12.** Further to the above, the interpretation of Rule 7 of the Advocates Remuneration Order was also stated as follows by Mabeya J in **Kithi & Company Advocates vs. 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."

- 13.** Given the aforementioned, the decretal amount is subject to interest at the rate of 14% annually starting 30 days after the bill is served, rather than on the date of taxation, once a judgment is entered on a certificate of costs. Evidence of the date the bill was served to the client must be on file in order for an advocate to be able to retrieve this. In Jackson **Omwenga & Co. Advocates Vs 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."*

14. In the case of **D. Njogu & Company Advocates vs Kenya National Capital Corporation [2006] eKLR**, the court held that: -

“Interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that the “correct fee note” meant a bill that was in accordance with the terms upon which the advocate had contracted with the client or the bill which the client did not dispute or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.

15. Moreover, in **Prof Tom Ojienda & Associates Vs 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.”*

16. The Applicant has demonstrated that an itemized Bill of Costs was delivered on **15th January 2024** and that interest began accruing 30 days later, on **14th February 2024** as stipulated. The claim for interest was made before payment and the Respondent had failed to settle or respond to the demand. I also put reference to the provisions of section 26(1) of

the Civil Procedure Act, which grants discretion to the court to award interest. In particular, this section states as follows: -

26. Interests

(1)Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

17. In view of the foregoing, the application herein is merited and the same is allowed in the following terms: -

- a. That Judgement be and is hereby entered in favour of the Advocate/Applicant as against the Client/Respondent for the sum of Kenya Shillings Two Hundred and Forty-Eight Thousand, Six Hundred and Thirty-Nine (Kshs. 248,639.00) with interest at 14% per annum from today's Ruling being 14th October 2025 until payment in full.*
- b. The costs of this application be awarded to the Advocate/Applicant at Kshs. 5,000/=*
- c. It is so ordered.*

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 15TH DAY
OF OCTOBER 2025**

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**R. NYAKUNDI
JUDGE**