



Menezes & Partners Advocates v APA Insurance Limited (Miscellaneous Civil Application E1111 of 2023) [2025] KEHC 13600 (KLR) (Civ) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1111 OF 2023**

JN MULWA, J

OCTOBER 2, 2025

BETWEEN

MENEZES & PARTNERS ADVOCATES APPLICANT

AND

APA INSURANCE LIMITED RESPONDENT

RULING

1. Before the Court for determination is the motion dated 22/11/2023 filed by Menezes & Partners Advocates (hereafter the Advocate/Applicant) as against APA Insurance Co. Ltd (hereafter the Client/Respondent) pursuant to Section 1A, 1B, 3A & 63(e) of the *Civil Procedure Act* (CPA), Section 51(2) of the *Advocates Act* and Rule 7 of the Advocates Remuneration Order seeking inter alia:
 - a. That judgment be entered for the sum of Kshs. 38,318/- being the Advocate's taxed and certified cost in Nairobi HC Misc. No. E139 of 2022
 - b. That the Advocate be awarded interest at the rate of 14% per annum from 01/05/2022.
 - c. That a decree be issued forthwith.
 - d. That the honorable Court be pleased to issue such orders and give such directions as it may consider appropriate to meet the ends of justice.
 - e. That the Client be condemned to pay the Advocates costs of the motion.
2. The motion is premised on grounds amplified in the supporting affidavit sworn on even date by Pauline W. Kamunya. The gist of her deposition is that the Advocate filed a bill of costs dated 21/02/2022 that was served upon the Respondent on 01/04/2022 upon which it was taxed on 25/01/2023 in the sum of Kshs. 38,318/- and a certificate of costs was issued on 31/01/2023.



3. The Client opposes the motion by way of a replying affidavit deposited by Shelmith Ngure on 10/01/2025. She states that the Advocate's bill of costs was taxed in the sum of Kshs. 38,318/- being the balance due on 31/01/2023 whereas on 27/05/2022, the Client had already settled a sum of Kshs. 29,491/- which was inclusive of VAT and disbursement. She goes on to depose that taxed costs being in respect of an Advocate-Client bill of costs, 5% withholding tax and 2% VAT had to be deducted as required by law. She concludes by stating that the sums due and owing to the Advocate in the net sum of Kshs. 5,964/- was duly paid vide a cheque dated 13/03/2024.
4. With regard to interest, the Respondent posits that the same can only be from the date of the certificate of costs; further the same cannot be granted on grounds that-; (i) VAT which is payable to the Kenya Revenue Authority (KRA); (ii) 5% of the instruction fees is paid to KRA as withholding tax; (iii) a substantial part of the payment had already been paid to the Advocate prior to taxation thus interest cannot accrue on the certificate of costs as the sum of Kshs. 29,491/- had to be deducted and accounted for.
5. In rejoinder by way of supplementary affidavit dated 04/03/2025, Pauline W. Kamunya avows that the awarded sum of Kshs. 38,318/- inclusive of VAT for legal fees, was after deducting the amounts paid prior to filing of the bill of costs. She acknowledges that the Client has since made cumulative payments of Kshs. 33,915/- towards settlement of the taxed amount however as per her calculations there is an outstanding principal balance of Kshs. 1,720.74/- of which continues to accrue interest.
6. That despite the Client having claimed to have made statutory deductions it has failed to furnish certificates proving remittance of the said statutory deductions. She goes on to state that notwithstanding the aforesaid outstanding balance, the Advocate is entitled to interest at the rate of 14% from 01/05/2022 until all sums are paid in full. That as at 01/05/2022 the principal sum stood of Kshs. 38,318/- of which has been ameliorated by two (2) installments therefore the total accrued interest as at 20/03/2025 was Kshs. 2,728.5/- thus making the total amount due Kshs. 4,448.89/-.
7. She further deposes that the Client's persistent pattern of delayed and piecemeal payments despite having full knowledge of its legal obligation, has unnecessarily caused avoidable financial hardship to the Advocate, resulted in significant expenditure of time, resources, and legal costs incurred in the preparation, filing, and prosecution of these applications. 8. In summation she urges that the Court ought to award Kshs. 30,000/- (exclusive of VAT) per matter as reasonable compensation for additional costs unfairly borne by the Advocate due to the Client's unjustified delay and failure to honor its obligation.
8. The motion was canvassed by way of written submissions, of which, the respective parties had an opportunity to highlight.

Issues for Determination

- i. Whether the Court ought to enter judgment in favour of the Advocate in respect of the balance of the taxed costs?
- ii. Whether the Advocate is entitled to interest at 14% on the balance of the taxed costs?
- iii. Who ought to bear the costs of the motion?

Whether the Court ought to enter judgment in favour of the Advocate in respect of the balance of the taxed sum?

9. As rightly submitted by the Advocate, upon taxation no reference or other challenge to the taxation proceedings or certificate of costs has since been mounted by the Client as provided for under Rule



11 of the Advocates Remuneration Order. That said, as earlier noted, the Advocate’s motion invokes Section 51(2) of the *Advocates Act*, which 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.”

10. Here, the Court’s understanding of Section 51(1) of the Act, is that the provision is express as to the finality of a Certificate of Taxation (See-; Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR) and whether judgment may be entered in respect of a Certificate of costs.
11. What I gather to be the rival arguments is that the Advocate contends that there is no proof evinced by the Client that the statutory deductions were ever remitted whereas if the same was actually done the total payments rendered by the Client leaves an outstanding balance of Kshs. 1,720.74/- and the total accrued interest on the reduced outstanding balance as at 20/03/2025 is Kshs. 2,728.15/- thus totaling Kshs. 4,448.89/-, as unpaid.
12. The Client’s retort is that Withholding Tax and VAT were deductibles as required by law, meanwhile there is no outstanding balance owing to counsel. That in any event, if the Court finds that there is any interest owing the same ought to be on Kshs. 5,964/- paid on 13/03/2024 and the accruing interest ought to be from the date of the certificate of costs.
13. With the above in reserve, it is well trodden that an advocate who has dutifully rendered legal services is entitled to compensation for work done. In satisfaction of the above, an advocate can opt to avail himself either the provisions of Section 48 or 51 of the *Advocates Act*, to actualize fees, however it bears importance to state that proceedings brought pursuant to the latter provision of the Act, enhances expediency in the resolution of claims arising from an Advocate-Client taxed bill of costs in consonance with Article 159(2)(b) of *the Constitution* and Section 1A & 1B of the CPA.
14. In Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR), Murgor JA, cited with approval the decision in Lubulellah & Associates Advocates v N.K. Brothers Limited [2014] eKLR where it was held 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.”
15. The above position was fortified in the resultant appeal to the Supreme Court in Kenya Airports Authority v Otieno Ragot and Company Advocates [2024] KESC 44 (KLR). That said, at the outset and given the rival affidavit material, this Court has been invited and must determine the outstanding balance, of which, the Client maintains there is none owing.
16. It is undisputed that the Advocate’s bill of costs was taxed at Kshs. 38,318/- with a certificate of costs issuing on 31/01/2023. Further, a review of Annex SN-1, attached to the Client’s response, a sum of Kshs. 27,951/- seems to have been paid after statutory deduction by way of VAT and Withholding Tax. The Advocate has admittedly confirmed vide her deposition that Withholding Tax certificate serial number KRAVWWON00550108322 for the amount of Kshs. 440/- was generated on 20/06/2022.



Later, vide a cheque dated 13/03/2024, Annex SN-2, the Advocate confirms that the Client settled a further sum of Kshs. 5,964/-.

17. By the Client's own tabulation in its response, it asserts having settled a sum of Kshs. 35,455/- of which has not been factored in the resultant certificate of costs. Interestingly, the Client has made heavy weather of the fact that it has settled the entire outstanding about yet the Advocates bill of costs was taxed at Kshs. 38,318/-, no explanation has been offered in respect of the balance. That said, the Advocate has equally assailed the Client's purported claim of remitting statutory deduction however has conceded to the amount of Kshs. 440/- being Withholding Tax settled on accord of the certificate KRAVWON00550108322 generated on 20/06/2022.
18. Still, I agree with the Advocate, if any statutory deductions were remitted, onus was on the Client to prove the same by evincing the VAT Certificate and or Withholding Tax Certificates of 5% and 2% respectively, for professional services. The evidential burden was at the Client's doorstep and it failed to pick up the gauntlet in the said regard.
19. In my estimation and for arguments sake, the claim fee voucher, Annex SN-1, was not conclusive proof thereof towards payment of statutory deductions or counsel. Further, there is no ex facie indication whether the said voucher was approved for payment. An EFT, RTGS or Cheque in favour of the Advocate and or KRA Certificate with respect to the purported deductions would have gone a long way to substantiate the ostensible payments. Neither of the aforesaid were adduced to shore up the claim on payments made to counsel.
20. Thus at the risk of repetition, going by the Advocate's deposition alongside a cursory review of Annex SN-1 & 2, the Advocates bill of costs was filed on or about 21/02/2022 and later taxed on 25/01/2023 to the tune of Kshs. 38,318/-. Prior to taxation, the Client seems to have settled a total of Kshs. 34,355/- inclusive of Kshs. 440/- VAT. Consequently, juxtaposing the taxed amount alongside the total amount settled leaves an unpaid balance of Kshs. 3,963/-, as at date of writing of this ruling.

Whether the Advocate is entitled to interest on the taxed costs?

21. By his motion, the Advocate has sought interest on the adjudged sum at 14% per annum from 01/05/2022. The provision on interest on taxed costs is hinged on Paragraph 7 of the Advocates Remuneration Order, which 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”
22. The Advocate lodged his bill of costs on about 21/02/2022 and pursuant to the above provision, the Applicant is entitled to levy interest after the expiry of one month from the date of delivery of his bill. It is not in dispute that the Advocate served its bill on or about 01/04/2022 going by Annexure Exhibit A, attached to the Advocates supporting affidavit. And on the premise of the latter provision, he was entitled to charge interest on taxed costs, upon the expiration of a month from when the bill was served.
23. Therefore, interest on the amount taxed would be chargeable from 01/05/2022 until payment in full. Ngugi JA, in *Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd* [2023] KECA 1398 (KLR) while addressing himself on application of Paragraph 7 of the Advocates Remuneration Order succinctly put it that-;



30. The crux of the matter is that the appellant/advocate did not, in its Bill of Costs drawn and served on the client/respondent, include the potentially allowable interest of 14% p.a. The advocate only claimed the interest, for the first time, in the adoption proceedings under Section 51(2) of the *Advocates Act*. The appellant insists that he was allowed to do so and that, conversely, the Court was obligated to award them the interest.
31. As should be obvious from the unbundling of Rule 7 of the Advocates Remuneration Order and Section 51(2) of the *Advocates Act* above, it was not open to the appellant to claim the potentially permissible interest rate of 14% for the first time during adoption proceedings under Section 51(2). This is because it was incumbent upon the advocate to put the client on notice that he intended to claim the interest at the point at which he drew the Bill of Costs. He did not. If an advocate is interested in claiming the potentially allowable interest at 14% p.a., he must make the claim in the Bill of Costs.
33. To reiterate, the policy rationale for this interpretation is that the advocate should put the client on notice about the totality of the claim he has against the client at the earliest instance.
- There is a policy preference against an advocate making piecemeal claims against the client. Requiring an advocate to raise the claim for interest at the earliest instance gives the client an opportunity to object to any delays by the advocate in raising the Bill of Costs. This, in turn, acts as a disincentive for advocates to needlessly delay raising a Bill of Costs with the sole objective of increasing the amounts due through the allowable interests under rule 7 of the Advocates Remuneration Order. Conversely, it incentivizes clients to promptly pay the amounts due to the advocate as claimed in the Bill of Rights or raise an objection promptly.
34. In the present case, the appellant neither claimed the interest at 14% p.a. in his Bill of Costs nor filed a reference under Rule 11 of the Advocates Remuneration Order. Consequently, it was improper for the appellant to raise the claim for the first time in the Section 51(2) proceedings. It follows that the learned judge did not misapprehend the law or abuse his discretion in disallowing the claim.
35. The upshot is that the appeal lacks merit. I propose that it be dismissed. Noting some of the conflicting High Court decisions on the topic, however, I would propose that each party bears its own costs.
24. However, earlier, the same Court in *Otieno, Ragot & Company Advocates v Kenya Airport Authority* [2021] KECA 587 (KLR) highlighted the discretionary nature of an award on interest. Ouko JA (as he then was) concurring with Murgor, JA. stated that-;
- “Finally, regarding computation of interest, while I agree with Murgor, JA’s conclusion, that the award of interest is a discretionary matter, I wish only to emphasize, as Onguto, J. did in *Mercy Nduta Mwangi t/a Mwangi Keng’ara & Company Advocates vs. Invesco Assurance Company Limited* [2017] eKLR, that, that discretion comes with the power to reduce the period for which interest is payable. It extends to altering the rate at which interest is payable and even to withholding the entire interest payable in the interest of justice.”
25. While I agree with the Client that an award of interest is discretionary, Ouko, JA (as he then was), in the majority decision of the Court in *Otieno, Ragot & Company Advocates v Kenya Airport Authority* [2021] KECA 587 (KLR), qualified his reasoning as to why the Court invoked its discretion to decline an award of interest in the matter. In the emanating appeal, *Kenya Airports Authority v Otieno Ragot and Company Advocates* [2024] KESC 44 (KLR), the apex Court declined to pronounce itself as to



when time begins to run concerning the award on interest. However, it would seem that the same had since been settled by the Court of Appeal of which I will address later in this ruling.

26. Applying my mind to the above dicta, a cursory perusal of the Advocates bill of costs, a claim on interest at 14% per annum from the expiry of 30 days from the date of service of the bill of costs upon the client until payment in full was made. Eventually, the taxing officer did not address herself on the claim for interest in her ruling of 25/01/2023, Annexure Exhibit A, despite the same being pleaded by the Advocate in his bill of costs.
27. Further, the extracted certificate of costs did not factor the Advocates claim on interest whereas counsel equally failed to challenge the said omission by way of reference pursuant to Paragraph 11 of the Advocates Remuneration Order in light of the exhortation of Ngugi JA, in *Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd* [2023] KECA 1398 (KLR). The latter decision dissuades parties from claiming interest for the first-time during adoption proceedings under Section 51(2) of the *Advocates Act*, where despite the same being claimed in the final fee note or bill of costs, the taxing officer omits to award the same in her ruling or certificate of costs.
28. My understanding of Ngugi JA, exhortation in *Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd* [2023] KECA 1398 (KLR) is that such omission must in the first instance be challenged by way of reference. At the risk of repetition, here, despite counsel raising a claim on interest in his bill of costs, he failed to challenge the taxing officer's omission to address the same in the final award by way of reference.
29. Subsequent rendition of Ngugi JA, in *Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd* [2023] KECA 1443 (KLR) wherein he pithily settled the question of interest with respect to taxed costs as follows-;
 24. I believe that this decision and its companion one in *Kisumu Civil Appeal No. 129 of 2018* will remove the cobwebs of confusion reigning in this area. It comes down to a salutary advice for advocates: if one hopes to claim the 14% p.a. interest under Rule 7 of the Advocates Remuneration Order on a fee note or Bill of Costs, one must make the claim in the fee note and/or Bill of Costs. If the interest is not claimed in the fee note or Bill of Costs, an advocate loses his right to claim for it subsequently. Similarly, if the interest of 14% under Rule 7 of the Advocates Remuneration Order is not specifically awarded during the taxation proceedings, the advocate must invoke Rule 11 of the Advocates Remuneration Order and file a reference to protest the omission. The advocate cannot wait to introduce the interest during enforcement proceedings under Section 51(2) of the *Advocates Act*.
30. Therefore, the claim on interest at 14% by the advocate is declined however, the unpaid balance of Kshs. 3,963/- earlier adjudged will attract interest at Court rates from the date of lodging the bill of costs until payment in full.

The Respondent shall bear costs of the application at Kshs. 5,000/= to the Advocates.

Order accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 2ND OCTOBER, 2025.

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JANET MULWA.

JUDGE

