

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC. CIVIL APPLICATION NO. E1128 OF 2023

MENEZES & PARTNERS ADVOCATES.....
APPLICANT

-VERSUS-

APA INSURANCE LTD.....
.....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. 84,367/- being the Advocate taxed and certified costs in Nairobi HC Misc. No. E157 of 2022*
 - b. *That the said sum do accrue interest at 14% per annum as awarded in the ruling dated 17/03/2023.*
 - 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**, advocate for the Applicant. 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. On 17/03/2023, the aforestated bill of costs was taxed in the sum of Kshs. 84,367/- and a certificate of costs issued on 20/04/2023. That it is only fair that interest be awarded at the rate of 14% per annum from 01/05/2022 being the expiration of one month from the day when the Advocate's bill of costs was served upon the Client.
3. She goes on to depose that the certificate of costs has since not been appealed, stayed and or set aside. In conclusion she deposes that the Client's failure to promptly and fully settle the sums due to the Advocate for services rendered, the latter has consequently been denied use of the said sums, therefore it is reasonable and proper that the instant application be allowed as prayed and a decree accordingly issued.
4. The Client **opposes the motion** by way of a replying affidavit deposed by **Shelmith Ngure dated 20/01/2025**. She states that the Advocates bill of costs was taxed in the sum of Kshs. 84,367/- being the balance due on 03/04/2023, and that as at 30/05/2022, the Client had already settled a sum of Kshs.

33,795/- which was inclusive of VAT and disbursement. She goes on to depose that the taxed costs being in respect of an Advocate-Client bill of costs, 5% Withholding Tax and 2% VAT has to be deducted as required by law. She concludes by deposing that despite the taxing officer directing that the taxed sum will attract interest at 14% from the date of filing up to the date of final payment, the same ought not to 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; and (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 date as the sum of Kshs. 33,765/- has to be deducted and accounted for.

5. In rejoinder by way of **supplementary affidavit dated 04/03/2025, Pauline W. Kamunya** avows that the taxed sum of Kshs. 84,367/- inclusive of VAT for legal fees in the matter was awarded after deducting amounts paid prior to filling of the bill of costs. She acknowledges that the Client has since made cumulative payments of Kshs. 31,975/- towards settlement of the taxed amount however, as per her calculations there is an outstanding principal balance of Kshs. 46,486.31/- of which continues to accrue interest.
6. Further it is deposed 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% awarded at taxation from the date of filing the bill of cost on 24/03/2022 until all sums are paid in full. That as at 20/03/2025 the outstanding principal balance stood at Kshs. 46,486.31/-interest of Kshs. 2,021.94/- thus making the total amount due Kshs. 48,508.25/-,

7. She 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. In summation, she states 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. Having considered the rival affidavit material and submissions, the court flags the following

Issues for determination : -

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

- 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 and 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. 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. 46,486.31/- and total accrued interest on the reduced outstanding balance as at 20/03/2025 is Kshs. 2,021.94/- thus totaling Kshs. 48,508.25/- as unpaid. The Client's retort is that Withholding Tax and VAT were deductibles as required by law meanwhile interest cannot accrue on the taxed costs date as the sum of Kshs. 33,795/- has to be deducted and accounted for.

11. That in any event, if the Court finds that there is any interest owing, the same ought to be based on an accurate figure and not as per the certificate of costs issued on 20/04/2023 as it includes errors on the amount payable and does not include the sum of Kshs. 33,795/- paid on 30/05/2022.
12. With the above in reserve, it is trite 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** 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 a taxed Advocate-Client bill of costs in

consonance with **Article 159(2)(b) of the Constitution and Section 1A & 1B of the CPA.**

13. 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.”

14. 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 the taxed amount did not factor the sum of Kshs. 33,795/- paid to the advocate on 30/05/2022. It is undisputed that the Advocate’s bill of costs was taxed on 17/03/2023 at Kshs. 84,367/- with a certificate of taxation issuing on 20/04/2023. Further, a review of Annex SN-1, attached to the Client’s response, a sum of Kshs. 31,975/- seems to have been paid after factoring VAT

and withholding tax. The Advocate has however assailed the Client's purported claim of remitting statutory deductions meanwhile went ahead to postulate the unpaid balance, on the premise of proof of the deductibles.

15. By the Client's own tabulation in its response, it asserts having settled a sum of Kshs 33,795/- of which, has not been factored in the resultant certificate of costs. Nevertheless, I garner there is a tacit admission by the Client that there is an unpaid balance owing to the Advocate and thus it would seem that at this juncture the parties hereto are quibbling as to what figure the unpaid balance is. That said, it warrants restatement that the Advocate has vehemently assailed the Client's purported claim of settling statutory deduction, with no concession of the same, subject to proof.
16. Still, I agree with the Advocate, if any statutory deduction were remitted, the onus was on the Client to prove the same by evincing the VAT certificate and or Withholding Tax certificate 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.
17. 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 aforestated were adduced to shore up the claim on payments made to counsel.

18. Thus for purposes of clarity, 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 17/03/2023 to the tune of Kshs. 84,367/-. Prior to taxation, the Client seems to have settled a total of Kshs. 31,975/- however failed to evince the statutory remittances totaling Kshs. 1,820/-. Consequently, juxtaposing the taxed amount alongside the total amount settled leaves an unpaid balance of Kshs. 52,392/-, as at date of writing of this ruling.

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

19. By its motion, the Advocate has sought interest at 14% per annum from 17/03/2023. 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”

20. 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 his bill on or about 01/04/2022 going by Annexure Exhibit A, attached to the Advocate’s 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. Therefore, interest on the amount taxed would be chargeable from 01/05/2022 until payment in full.

21. Recently, 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.

22. The court further added that-

32. Once the advocate includes the claim of interest, it must be litigated before the Taxing Master in the taxation proceedings. If it is awarded by the Taxing Master, it would be well and good for the advocate. However, if it is not awarded in the taxation proceedings and included in the Certificate of Costs, the advocate must challenge the omission in a reference to the court under **Rule 11 of the Advocates Remuneration Order**. It is not open to the advocate to spring the claim of interest for the first time at the enforcement proceedings under **Section 51 of the**

Advocates Act. 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.*

23. The court continued thus—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.*

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. Subsequently, the taxing officer in her ruling, Annexure Exhibit A, upon taxing the bill at Kshs. 84,367/- ordered that the sum would attract interest of 14% from the date of filing the bill of cost until payment in full.
27. However, the extracted certificate of costs did not factor or compute the awarded interest, presumably out of an inadvertent omission. If the taxing officer failed to award interest despite the Advocate's explicit claim for the same, the latter ought to have pursued a reference under 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)** given that 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. Here, the same was awarded however not computed in the resultant certificate of taxation.
28. Ngugi JA, in his subsequent rendition in **Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd**

[2023] KECA 1443 (KLR) 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**. If the advocate demands interest at that late stage, he will likely suffer two potential perils: the court can only award interest at earliest from the date of lodging the Bill of Costs; and the interest is at the discretion of the court. However, where the interest of 14% p.a. under **Rule 7 of the Advocates Remuneration Order** is specifically claimed in the Bill of Costs and awarded*

*during the taxation proceedings, the interest will apply to the taxed amount until it is fully paid. An application under **51(2) of the Advocates Act** will not act to reduce the interest rate or otherwise create a reservoir of discretion for the judge to change the interest rate.*
[Emphasis mine]

29.Therefore, the claim on interest at 14% is allowed on the unpaid **balance of Kshs. 52,392/-** earlier adjudged herein from **01/05/2022** until payment in full.

30.Given the foregoing and without further encumbering parties with further litigation on costs of the instant motion, the court allows costs at **Kshs. 5,000/=** in favour of the Advocates.

Order accordingly.

Delivered Dated and Signed at Nairobi this 2nd October, 2025.

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JANET MULWA.

JUDGE