

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISCELLANEOUS CIVIL APPLICATION NO. E069 OF 2023

**NGAYWA & KIBET PARTNERS LLP.....
APPLICANT**

VERSUS

MONARCH INSURANCE LIMITED

COMPANY.....

RESPONDENT

RULING

1. This honourable court has been moved under Section 51 (2) of the Advocates Act vide a Notice of Motion dated 14th December 2024. The Applicant is seeking to have judgment entered in his favour against the Respondent for the sum of Kshs.98,050.00 only, being the certified costs due to the applicant as against the Respondent.
2. The Applicant also seeks this honourable court to order the Respondent to pay the costs of the Application together with interest on the taxed sum.
3. The Application is supported by grounds on the face of the Application together with the affidavit of MOSES NGAYWA of even date in support of the application.
4. It is averred that the Applicants represented the interests of the Respondent in Kigumo SRMC No.13 of 2019
5. The Respondent failed to pay the legal fees thereby necessitating the filing of a bill of costs for taxation. The said Bill of costs was taxed on 7th December 2023 in the sum of

Kshs.66,250.00 and a certificate of costs issued to that effect.

6. The Certificate of costs has neither been appealed against, set aside, varied or altered yet the Respondent has refused, failed and or neglected to settle the taxed costs despite service and several reminders.
7. The Applicant therefore prayed that judgment be entered as prayed for the sum of Kshs. 66,250.000.00 being the taxed costs against the respondents together with interests thereof.
8. The Application is undefended as the Respondent has never entered appearance despite service.
9. Upon considering the Application, the supporting affidavit and the pleadings herein the following issues commend themselves for determination:
 - i. Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs.66,250.00.00; and
 - ii. Whether the applicant should be awarded interests on the taxed costs.
10. **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.”

11. 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.

12. For this application to succeed, 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. In **Lubulellah & Associates Advocates Vs 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.”

13. 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 4th March 2024 is uncontested.

14. Accordingly, I hereby enter judgment for the applicant advocate on the taxed costs of . Kshs.66,250.00 00 as per the certificate of taxation dated 7th December 2023.

15. 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.”

16. 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 Vs 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.”

17. The above position and 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”.

18. 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.

19. 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.”

20. 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.

21. 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.

22. 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.

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

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

i. The Certificate of Taxation dated 4th March 2024 is adopted as an order of the court and judgment is entered in favour of the Applicant for Ksh. 100,425.00

ii. The prayer for interests on the taxed costs is dismissed

iii. Costs to the Applicant

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 9TH OCTOBER, 2025.

HON. T. W. Ouya

JUDGE

ORIGINAL