

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**MISC APPL E1060 OF 2020**

[Coram: Gikonyo ]]

**LUBULELLAH & ASSOCIATES**

**ADVOCATES.....DECREE  
HOLDER/ APPLICANT**

**VERSUS**

**PATRICK SAGWA KISIA....JUDGMENT  
DEBTOR/RESPONDENT**

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**RULING**

1. The decree holder/ applicant filed the notice of motion dated 7<sup>th</sup> May 2023, seeking: -
  - (1) a review of the judgment and decree in the matter to include interest at court rates (14% per annum) from the date of the taxation to the date of payment in full.
  - (2) in the alternative to the above, amendment of the decree to provide for interest at 14% per annum from the date

of the decree to the date of payment in full.

2. The application is made under **Order 45 Rule 1 & 3 of the Civil Procedure Rules.**

It is based on the grounds outlined in its body and the supporting affidavit sworn by **Anthony Millimu Lubulellah, Advocate** on 7<sup>th</sup> May 2023 and written submissions dated 23<sup>rd</sup> October 2024.

3. In a nutshell, the grounds for applying are that: -

(1) The applicant filed an advocate - client bill of costs which was taxed in the sum of **Kshs. 6,234,961.40/-**.

(2) On 15<sup>th</sup> July 2022 judgment entered by this court upon the sums taxed under the Certificate of Taxation, and a Decree issued on 18<sup>th</sup> July 2022.

(3) In a supplementary affidavit sworn and filed on 27<sup>th</sup> October 2021, the applicant

showed that it had served the respondent with a notice of intention to charge interest on the costs at the rate of 14% per annum in compliance with **Order 7** of the **Advocates (Remuneration) Order**.

(4) The judgment and decree did not provide for interest on the same, and no reason was provided to show whether the court specifically denied it interest.

4. The applicant relied on the following cases: -

- (1) **Alex Otieno Omayo t/a Omayo & Co. Advocate v Piedmont Investments Ltd [2018] eKLR**
- (2) **Muri Mwaniki & Wamiti Advocates v John Ngigi Ng'ang'a & Another [2014] eKLR**
- (3) **Otieno Ragot & Company Advocates v National Bank of Kenya Limited [2016] eKLR**

(4) **Amondi & Co Advocates v County Government of Kisumu [2021] eKLR**

5. The respondent opposed the application through written submissions dated 30<sup>th</sup> April 2025. He argued that the applicant has not satisfied the grounds for review which are limited to discovery of new and important evidence and error on the face of the record.
6. The respondent asserted that interest does not automatically apply under **Rule 7 of the Advocates Remuneration Order** and only applies once the court has determined. He added that interest starts to apply 30 days after the client/ respondent became aware of the taxed costs or upon delivery of the taxation ruling.
7. The respondent contended that he has never been made aware of the taxed costs by the applicant. He urged the court to dismiss the application with costs.

8. The respondent relied on the following cases:

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- (1) Republic v Medical Practitioners & Dentists Board & Another & another; MIO1 on behalf of MIO2 (a Minor) & another (Interested Party); Kingángá (Exparte) (Miscellaneous Civil Application 59 & 63 of 2019 (Consolidated)) [2021] KEHC 298 (KLR) (Judicial Review) (16 November 2021)**
- (2) Richard Francis Malelu v Odhiambo Asher & Another 2020 eKLR**
- (3) Nyamogo & Nyamogo Advocates v Moses Kipkolum Kogo 2001] 1 EA 173**
- (4) Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers [2016] eKLR**

### **Analysis and Determination**

9. The court has the discretion to review its own judgment or decree. **Section 80 of the Civil Procedure Act.** The discretion ought to be exercised judicially primarily upon the grounds set out under **Order 45 of the Civil Procedure Rules**, to wit: - ***discovery of new and important matter or evidence or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.***

10. The respondent argued that the applicant has not met the threshold for a review, for it did not state the specific ground on which review has been sought. The respondent haughtily asserted that review is limited to only two grounds: on account of discovery of new and important evidence or some mistake/error apparent on the face of the record.

11. In response to the latter argument by the respondent the court cites **Wangechi Kimita & Another v Mutahi Wakabiru Ca No 80 Of 1985 (Unreported)** cited with approval in **Shanzu Investments Ltd v Commissioner of Lands [1993] eKLR** where it was held that: -

*“any other sufficient reason need not be analogous with the other grounds set out in the rule because such a restriction would be a clog on the unfettered right given to the court by Section 80 of the Civil Procedure Act. The court further went on to hold that the other grounds set out in the rule did not in themselves form a genus or class of things with which the third general head could be said to be analogous.*

*The current position would, then, appear to be that the court has unfettered discretion to review its own decrees or orders for any sufficient reason.”*

12. The instant application is based on the ground that there was an omission to provide for interest in the judgment and the decree.
13. In my view, such omission could be a sufficient reason for review.
14. But, the question before the court is whether there is a sufficient reason to review the judgment and decree and include interest.
15. The respondent argued that judgement cannot be reviewed/amended to award the applicant interest. According to him, the award of interest is at the court's discretion and in not awarding interest, the court merely exercised discretion.
16. The respondent argued further that, in the application dated 15th October 2021, the applicant did not seek for interest; only sought for judgement to be entered as per the certificate of taxation.

17. The applicant's position was that the court omitted a determination on the issue of interest even though it was raised in the supplementary affidavit.

18. It is tidier and instructive to seek for interest in the main application rather than hide the request in a supplementary affidavit.

19. Nonetheless, I have read the supplementary affidavit sworn and filed on 27th October 2021. The applicant exhibited a notice of interest and fee note both dated 16th September 2020 and a forwarding email of the same date.

20. The applicant demonstrated that it issued the respondent with a notice of intention to charge interest on the costs at the rate of 14% per annum in compliance with **Rule 7 of the Advocates (Remuneration) Order (ARO)**.

21. **Rule 7 of the ARO** 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.”***

22. From the above, the applicant is entitled to interest at 14% per annum on disbursements and costs. The advocate complied by issuing notice of intention to charge interest. This evidence was before the court, hence, there was a clear omission which is sufficient reason to review a decision of the court. Therefore, I find that there is a sufficient reason to review the judgment/ decree and include the interest.

23. In the upshot, the application dated 7<sup>th</sup> May 2023, is allowed, in the following terms: -

(1) The judgment dated 15<sup>th</sup> July 2022, and the decree issued on 18<sup>th</sup> July 2022 are varied to include an award of interest on

the judgment sum of **Kshs. 6,234,961.40/-** at 14% per annum from the date of taxation (5<sup>th</sup> October 2021) until payment in full.

Orders accordingly.

**Dated, signed and delivered through  
Microsoft Teams online application this 23<sup>rd</sup>  
day of October, 2025**

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**F. Gikonyo M**

**Judge**

**In the presence of:**

Wendo for decree holder/applicant

Ms. Owuor for Respondent

CA - Kinyua