

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISC CIVIL APPLICATION NO E006 OF 2025

IN THE MATTER OF THE ADVOCATES (REMUNERATION AMENDMENT ORDER)

AND

IN THE MATTER OF ELDORET SMALL CLAIMS COURT

SCCOMM/E1082/2024

AND

IN THE MATTE OF ADVOCATES CLIENTS BILL OF COST

BETWEEN

M/S JEPCHIRCHIR & CO.

ADVOCATES.....APPLICANT

=VERSUS=

JOHN OBURUR KIMORI T/A PHILADEPHIA

AGENCY.....RESPONDENT

Coram: Before Justice R. Nyakundi

M/s Chepchirchir & Co. Advocates

RULING

1. Before this court is a Notice of Motion Application brought under section 51 (2) of the Advocates Act chapter 16 of the Laws of Kenya seeking the following orders: -

- a) That Judgement be entered in favour of the Applicant against the Respondent for the sum of Kshs 65,000/= (Kenya shillings sixty-five thousand only) being the certified costs due to the Applicants as against the Respondent.
- b) That the Respondent does pay to the Applicant the costs of this application together with interest of the taxed sum

2. Which application is based and supported by annexed affidavit of JEPCHIRCHIR IRENE, the Applicant herein and such other grounds to be adduced at the hearing hereof and upon the following grounds:
 - a. The advocate-client costs due to the Applicant herein have been taxed at Kshs 65,000/= (Kenya shillings sixty-five thousand only) in favor of the Applicant as against the Respondent and a certificate of costs issued to that effect.
 - b. That the Respondent has neglected, refused and or failed to settle the taxed costs.
 - c. That there is no dispute that Respondent retained the Applicant herein as his advocate in respect of which advocate-clients' costs were taxed herein
 - d. That it is only fair and just in the circumstance that judgement be entered for amount of Kshs 65,000/= (Kenya shillings sixty-five thousand being the total sum certified to be due to the Applicant herein as against the Respondent.
3. It is annexed by an affidavit sworn by Jepchirchir Irene which states as follows: -
 - a. *That I am a female adult of sound mind and an Advocate of this Honourable Court of Kenya and the Proprietor of the Applicant's firm herein and therefore competent and authorized to swear this Affidavit.*
 - b. *That on 24th July 2024, the Respondent herein instructed us, the firm of M/s Jepchirchir & Co. Advocates, to act for the Claimant ELDORET SMALL CLAIMS COURT CASE NO. E1082 OF 2024: JOHN OBURU KIMORI T/APHILADELPHIA AGENCY VS CHINA RAILWAY NO 10. ENGINEERING GROUP CO. LTD*
 - c. *That thereafter, the Respondent failed to pay legal fees, thereby necessitating the filing of a bill of costs herein for taxation and the*

same was taxed for a sum of Kshs. 65,000/-(Kenya Shillings Six Five Thousand) and a certificate of taxation issued on that effect.

- d. That the Respondent has refused failed and or neglected to settle the taxed costs despite being served with the certificate of costs.*
- e. That the certificate of taxation has not been appealed against, set aside or altered by the Respondent.*
- f. That in the circumstance it is only fair and just that judgment be entered as prayed of Kshs. 65,000/=for the sum (Kenya Shillings Six Five Thousand) being the taxed against the Respondent together with interest thereof.*
- g. That what I have stated herein above is true to the best of my knowledge, information and believe.*

Analysis and Determination

- 4. I have read and considered the notice of motion application and the annexed Affidavit in support of the same. 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 kshs. Six five Thousand (65,000/=)
 - 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 kshs. Six five Thousand (65,000/=)

- 5. A clear reading from the record indicates that the Applicant has annexed a Certificate of Taxation by the Taxing Master dated 29th August 2025 as a confirmation to this Honourable Court that the Advocate/Client Bill of Costs was taxed at Kshs. 65,000/=. The Respondent has not filed any reference to challenge the ruling of the taxing officer delivered on 29th

August 2025 and nor has the Certificate of Taxation been varied or set aside.

6. The applicable law relating to the application at hand is section 51(2) of the Advocates Act which states 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 it, including where the retainer is not disputed an order that judgment be entered for the sum certified to be due with costs.”

7. 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.”

8. 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 29th August 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. 65,000/= as per the certificate of taxation dated 29th August 2025.

Whether the applicant should be awarded interests on the taxed costs

9. 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.”

10. 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.”

11. 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.”

12. 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.”

13. 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.

14. 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.”*

15. From the record before this Honourable Court, a bill of costs was taxed in favour of the Applicant and a certificate of taxation for Kshs. 65,000/= issued. The certificate is exhibited to the Applicant’s affidavit. The Respondent has been served with the certificate of taxation and has not paid the taxed sum. The Respondent has not shown that the taxation has

been appealed, set aside or otherwise voided. There is no affidavit or material before the Court demonstrating any bona fide dispute as to the Respondent's liability to the taxed costs or the quantum certified. Accordingly, the taxed sum constitutes a presently payable debt owing to the Applicant which the Respondent has neglected or refused to pay.

16. From the above, 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 Six Five Thousand (65,000/=) with interest at 14% per annum from today's Ruling being 23rd October 2025 until payment in full.*
- b. The costs of this application be awarded to the Advocate/Applicant at Kshs. 7,000/=*
- c. It is so ordered.*

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 23RD DAY
OF OCTOBER 2025**

.....

**R. NYAKUNDI
JUDGE**