

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL MISC. APPLN NO. E014 OF 2025

NDUATI & CO. ADVOCATES
APPLICANT/ADVOCATE

- VERSUS -

OCCIDENTAL INSURANCE CO. LIMITED
RESPONDENT/CLIENT

RULING

1. By a Motion on Notice dated **20/05/2025**, the Advocate applied for Judgment for **Kshs. 236,036/-** against the respondent. The Motion was brought under the provisions of ***Order 51 Rule 1 of the Civil Procedure Rules*** and ***section 51(2) of the Advocates Act, Cap 16 Laws of Kenya***.
2. The basis for seeking judgment was that it was in terms of a Certificate of Costs dated **19/5/2025**. The Advocate also sought interest at the rate of 14% per annum from **24/1/2025** until payment in full.
3. In the Supporting affidavit sworn by **Stanley T. Nduati** on **20/05/2025**, it was contended that the Advocates fees became due on **19/5/2025** when the certificate was made. That the respondent was served with the advocate's bill of costs dated **24/1/2024** and that the respondent is facing a liquidity crisis and the recovery of the funds is in jeopardy.

4. The Motion was opposed vide the respondent's replying affidavit sworn on the **23/6/2025** by one **Michael Shisia**, its assistant legal manager wherein the respondent opposes the interest sought as it was never asked for in the bill of costs and neither was it awarded by the taxing master.
5. I have considered the record. I have seen a copy of the Certificate of Costs issued on the **19/5/2025**. It is for **Kshs.236,036/-**.
6. **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 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.”

7. From the foregoing, it is clear that an Advocate is entitled to judgment on the amount certified after a taxation of an advocate-client bill of costs. That Certificate must not have been varied or set aside. In the present case, there was no evidence that the Certificate had been varied or set aside.
8. On the issue of interest, the Court of Appeal, quite recently, discussed this issue of interest chargeable on costs at length in the case of **Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd (Civil**

Appeal 165 of 2019) [2023] KECA 1443 (KLR) (24 November 2023)

(Judgment)as follows, inter alia: -

“With respect, in the circumstances of this case, I think the learned Judge was obliged to utilize the awarded interest rate of 14% p.a. This is because in this case, the appellant put the client on notice about his claim for interest at 14% p.a. under Rule 7 of the Advocates Remuneration Order. The client, then, specifically litigated the interest in the taxation proceedings – and was awarded the interest by the Taxing Master. The appellant, therefore, made this claim to the client a priori so as to notify the client he would be demanding interest. The Certificate of Costs could, at the time it was issued, only reflect the interest as it stood on the date it was issued. However, having lawfully and procedurally awarded the appellant the interest at 14% p.a. by dint of Rule 7 of the Advocates Remuneration Order, it would be absurd to hold that the rate could be changed at the discretion of the High Court if the client failed to settle the amounts claimed necessitating the appellant to lodge section 51(2) enforcement proceedings. In the present case, the appellant claimed and was awarded interest at 14% p.a. during taxation and, therefore, had no need to invoke Rule 11 of the Advocates Remuneration Order to challenge it.” [emphasis added]

9. The Court of Appeal further stated: -

“22. To reiterate, the rule of law announced in the companion case, Kisumu Civil Appeal No. 129 of 2018, to the effect that an advocate is not permitted to surcharge a client interest at the rate of 14% p.a. under Rule 7 of the Advocates Remuneration Order unless he notified the client of that charge in his fee note/bill to the client and in his Bill of Costs as lodged in Court has no application in this case. This is because, here, the advocate included the interest in the Bill of Costs and benefitted from a favourable award by the Taxing Master. It was incumbent upon the respondent, if dissatisfied with the award, to challenge it by invoking Rule 11 of the Advocates Remuneration Order; and it did not do so.” [emphasis added]

10. The Court of Appeal did not stop there. It went further to clarify the position and to expunge any confusion on interest allowable on advocate/client costs and stated as follows, quite authoritatively: -

“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 added]

11. For all the above reasons, I find that no interest is payable on the costs subject of these proceedings. Although the advocate had demanded for interest at 14% at the time of drawing and serving the bill of costs upon

the client, the same was not awarded during taxation proceedings. The prayer for judgment on the Certificate of cost dated **19/5/2025** as per the taxation which took place on **2/4/2025** is allowed with an order that interest shall not be charged on the said taxed costs.

12. Accordingly, the application is allowed and judgment is entered for the applicant/advocate against the respondent/client for **Kshs. 236,036/-** only.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **31st** day of **October, 2025**.

A. MABEYA, FCI Arb

JUDGE