



Titus Makhanu & Associates Advocates v Alicate Holdings Limited (Civil Appeal E671 of 2023) [2025] KECA 1834 (KLR) (7 November 2025) (Judgment)

Neutral citation: [2025] KECA 1834 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E671 OF 2023
W KARANJA, LA ACHODE & SG KAIRU, JJA
NOVEMBER 7, 2025**

BETWEEN

TITUS MAKHANU & ASSOCIATES ADVOCATES APPELLANT

AND

ALICATE HOLDINGS LIMITED RESPONDENT

(Being an appeal from the Ruling and Order of the High Court of Kenya at Nairobi (F. Mugambi, J.) dated 23rd June, 2023 in Misc. (Ref.) Civil Appl. No. E145 of 2021)

JUDGMENT

1. The background of this appeal is as follows; the appellant was instructed by the respondent to represent it in arbitration proceedings for purposes of recovery of Kshs 745,456,000 from 3rd parties. The client-advocate relationship was never disputed. Upon conclusion of the matter, the appellant lodged its Advocates/Client Bill of Costs against the respondent in Nairobi HC Misc No E145 of 2021, Titus Makhanu & Associates Advocates -vs- Alicate Holdings Limited Limited.

The Bill of Costs was dated 22nd February 2021 and was served upon the respondent on 4th March 2021 through the respondent's email. Service of the Bill of Costs on the client was never disputed.

The Bill of Costs was taxed on 18th November 2021 in the sum of Kshs 414,416.77.

2. Both the applicant and the respondent were aggrieved by the taxation and they filed references dated 6th December 2021 and 30th November 2021 respectively, under paragraph 11 of the Advocates (Remuneration) Order.
3. The High Court (D.S. Majanja, J.) heard the references. In his ruling dated 22nd August 2022 the learned Judge held that the Deputy Registrar erred in failing to tax the instruction fees based on the amount ascertained in the statement of claim before the arbitral tribunal in accordance with Schedule 6 Part A 1(b) of the Remuneration Order. Further, he held that the Deputy Registrar failed to consider



whether the client should be given credit for Kshs.1,100,000.00 paid by the client to the advocate on the basis of the material submitted by the parties. The learned Judge in his ruling allowed the references dated 30th November 2021 and 6th December 2021 with the effect that the ruling of the Deputy Registrar dated 18th November 2021 was set aside.

4. The learned Judge ordered that the Bill of Costs dated 22nd February 2021 be taxed afresh before any other Deputy Registrar other than Hon. S. Githongori.
5. Pursuant to the said ruling of 22nd August 2022, the Bill of Costs was taxed afresh by Hon. Mary Osoro in the sum of Kshs 26,449,774.64. A Certificate of Costs dated 9th January 2023 was subsequently issued for the said amount.
6. Afterwards, the appellant lodged an application under section 51 rule 1 of the Advocates Act, to wit, Nairobi High Court Misc Application No 145 of 2021, seeking to have the Certificate of Costs adopted as the judgment and decree of the trial court. Additionally, the appellant also sought an award of interest on the taxed costs at the rate of 14% p a from 22nd February 2021 until payment in full, being the date the Advocate/Client Bill of Costs was filed.
7. In a ruling dated 23rd June 2023, the High Court (F. Mugambi, J.) adopted the Certificate of Costs as a judgment of the court but declined to award the interest as prayed. The learned Judge ruled that:

“The applicant prays for interest at 14%. The award of interest rate is at the discretion of the court. I note that the same was not pleaded in the reference dated 6th December 2021 and was also not granted. Having determined that the issue before me is res judicata this is a question that should have been brought before the learned Judge in the reference but was not. It is therefore not open to this court for determination.”
8. The appellant is aggrieved by that ruling of the High Court. The grievance is very specific: the appellant believes that the High Court should have acquiesced to his prayer for interest of 14% p.a to be calculated on the sum of Kshs 26,449,774.64 from the date the Bill of Costs was filed and/or one month from the date of service of the appellant’s Bill of Costs on the respondent.
9. The appellant filed a notice of appeal dated 11th July 2023, and a memorandum of appeal dated 18th August 2023, in which it raised three (3) grounds of appeal. These are that the learned trial Judge:-
 - i. misdirected herself both in law and in fact when she declined to grant interest on Kshs.26,449,774.64 being the taxed amount.
 - ii. misdirected herself both in law and in fact when she held that for interest to accrue on the taxed amount of Kshs.26,449,774.64 the appellant ought to have prayed for it while filing its reference dated 6th December 2021 and
 - iii. misdirected herself both in law and in fact by failing to consider that interest accrues on costs after expiration of one (1) month following the delivery of the Bill of Costs to the client so long as a claim for the interest is raised before the amount in the Bill is paid.
10. Consequently, the appellant prayed that: the appeal be allowed with costs to the appellant and the ruling dated 23rd June 2023 in Miscellaneous (Reference) Civil Application No E145 of 2021 be varied to award the appellant interest on the taxed amount at 14% p.a from the date of filing the Bill of Costs and/or one (1) month after service of the Bill of Costs upon the respondent until payment in full.



11. During the virtual hearing of the appeal, learned counsel, Mr. Makhanu, appeared for the appellant and learned counsel, Mr. Wainaina, appeared for the respondent. Both parties filed written submissions and relied entirely on them.
12. In its submissions, the appellant submitted that Rule 7 of the Advocates (Remuneration) Order allows an advocate to charge an interest at the rate of 14% p.a from the expiration of one month from the delivery of its Bill to the client. Further it was submitted that it is clear from rule 7 that for interest to accrue the advocate must first deliver his Bill to the client. Reliance was placed in *Otieno Ragot & Company Advocates -vs- Kenya Airports Authority* [2021] eKLR.
13. It was submitted that the appellant served the respondent with its Bill of Costs dated 22nd February 2021 physically on 3rd March 2021 and through the respondents' email address on 4th March 2021 and hence that the appellant complied with the first requirement of serving its Bill of Costs upon the respondent.
14. As to whether the appellant made a claim for interest at 14% p.a. as required by law, it was submitted that under Rule 7 of the Advocates (Remuneration) Order for interest to accrue the advocate must make a claim for interest before the amount of the bill is paid or tendered in full. Reliance was placed in *Amondi & Co. Advocates -vs- County Government of Kisumu* [2022] eKLR (Miscellaneous Civil Application 153 of 2020)
15. Further it was submitted that the appellant made a claim for interest through its application dated 10th January 2023 before the respondent made any payment and that it is noteworthy that Rule 7 of the Advocates (Remuneration) Order does not specify how to make a claim for the interest at 14% per annum, that is, that it does not state which pleadings/document to file in court while claiming the interest. It was submitted that so long as the claim is made including but not limited to through an application that such claim would suffice.
16. It was submitted that the only critical question that this Court ought to consider is whether the appellant made a claim for interest before the respondent made any payment to settle the amount in its bill. It was contended that accordingly the appellant has proved that it claimed interest as per Rule 7 of the Advocates (Remuneration) Order through its application dated 10th January 2023 and the respondent had not paid any amount towards its settlement and hence that the appellant has made a claim for interest at 14% p.a. as required by law.
17. As to which date the interest should accrue from it was submitted that Rule 7 of the Advocates (Remuneration) Order is clear that interest begins to accrue from the expiration of one (1) month from the date when an advocate delivers his bill of costs to the client. Reliance was placed on *Otieno Ragot & Company Advocates - vs-Kenya Airports Authority* (supra) and *Amondi & Co. Advocates - vs- County Government of Kisumu*. Further it was submitted that the appellant having proved service of the bill of costs to the respondent on 3rd March 2021 physically and through email on 4th March 2021 it was entitled to interest at 14% per annum from 3rd and/or 4th April 2021 which is one month after it delivered its bill to the respondent.
18. As to whether the appellant is entitled to interest this Court was invited to consider the literal meaning of Rule 7 of the Advocates (Remuneration) Order as one of the canons of statutory interpretation. Reliance was placed on *Harit Sheth T/A Harit Sheth Advocate -vs- K.H. Osmond T/A K.H Osmond Advocate* [2003] eKLR. It was submitted that as Rule 7 of the Advocates (Remuneration) Order is a subsidiary legislation to the *Advocates Act* Cap 16 of the Laws of Kenya, then it is subject to the canons of statutory interpretation. Further reliance was placed in *Oduor & 3 others -vs- Magistrates*



and Judges Vetting Board & Anor. (Civil Appeal 457,458,466 & 475 (consolidated) of 2018 [2021] KECA 92(KLR).

19. We were urged to allow the appeal as prayed.
20. Opposing the appeal, the respondent submitted that from the record the appellant did not plead and/or claim the interest at 14%p.a. in his Bill of Costs dated 22nd February 2012 and that the issue of interest was introduced on or about 10th January 2023 when the appellant applied to have judgement entered in the taxed amount of Kshs 26,449,774/64. It was contended that this was an afterthought and an attempt by the appellant to reap from what he had never sowed.
21. It was submitted, further, that the basis of the appellant's failure to plead the interest on the taxed amount in his commencement pleadings being the Advocates-Client Bill of Costs dated 22nd February 2021 and/or the reference dated 6th December 2021 and being sneaked in later on at the High Court proceedings and/or at the appellate stage is misdirected, misplaced and should be dismissed.
22. Learned Counsel for the respondent contended that the appellant has not demonstrated that the taxing officer and the learned Judge's failure to award the interest on the taxed amount was an error in principle and or that in exercising its discretion the High Court misdirected itself in some matters and as a result arrived at a decision that was erroneous. Reliance was placed in *Otieno Ragot & Company Advocates vs Kenya Airports Authority* [2021] eKLR and *Kipkorir Tito & Kiara Advocates -vs- Deposit Protection Fund Board* [2005] eKLR.
23. With regards to Rule 7 of the Advocates (Remuneration) Order, it was submitted that this provision confers discretion on the advocate as it is not in mandatory terms, it was contended that the appellant ought to have pleaded the interest in his bill but he did not and, therefore, cannot claim the same at this stage. Reliance was placed on *Otieno Ragot & Company Advocates - vs- Kenya Airports Authority* [2021] eKLR and *Kipkorir Tito & Kiara Advocates -vs- Deposit Protection Fund Board* (supra) for the proposition that costs are at the discretion of the court and an appellate court will not interfere with such an award unless it is demonstrated that the trial court or taxing master exercised his/ her discretion injudiciously. It was submitted that the appellant did not include the claim for interest in his Bill of Costs dated 22nd February 2021 and, therefore, that he lacks the basis to rely on Rule 7 of the Advocates (Remuneration) Order.
24. As to who bears the costs of the appeal it was submitted that it is trite that the costs of the suit follow the event, meaning that a successful party carries the crown and the jewels. Reliance was placed on *Jasbir Singh Rai & 3 others -vs- Tarlochan Singh Rai Estate & 4 others*; SC Petition 4 of 2012[2013] eKLR on the principles on the award of costs. We were urged to dismiss the appeal and to condemn the appellant to bear the costs of the appeal.
25. We have carefully considered the pleadings in the record of appeal, the ruling of the trial court, the appellant's grounds of appeal and the rival submissions of the parties. This being a first appeal, our primary role is to re-evaluate, re-assess, and re-analyze the record and then determine whether the conclusions reached by the learned Judge are to stand or fall, and give reasons either way- see *Abok James Odera T/A A. J. Odera & Associates -vs- John Patrick Machira T/A Machira & Company Advocates* [2013] KECA 208 (KLR).
26. In our view, the singular issue for determination in this appeal is whether an advocate can charge the potentially allowable interest of 14% pa. under Rule 7 of the Advocates (Remuneration) Order on a taxed Bill of Costs when the advocate did not include the interest in the original Bill of Costs served on the client and taxed by a Taxing Master. Differently put, can an advocate retroactively charge the



allowable interest of 14%p.a. under Rule 7 of the Advocates Remuneration Order after the advocate's Bill of Costs has been taxed and certificate of costs issued?

27. As a starting point, we recognize that a taxing officer has judicial discretion with regard to quantum of taxation and the trial court or appellate court will not normally interfere with the same unless there was an error in principle or such discretion was improperly exercised. In *Kipkorir, Tito & Kiara Advocates -vs- Deposit Protection Fund Board* [2005] eKLR, the court held that:

“On reference to a Judge from the Taxation by the Taxing officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”

See also *Arthur -vs- Nyeri Electricity Undertaking* [1961] EA 492 and *Premchand Raichand Limited & another -vs- Quarry Services of East Africa Limited and Another* [1972] EA 162.

28. Rule 7 of the Advocates (Remuneration) Order provides that:

“An advocate may charge interest at 14% per annum on his disbursements and cost, 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.”

29. On the other hand, section 51(2) of the *Advocates Act* 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.”

30. In *Lubulellah & Associates Advocates -vs- N.K. Brothers Limited* [2014] eKLR this Court explained the import of section 51(2) of the *Advocates Act* thus:

“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.”

See also *Musyoka & Wambua Advocates -vs- Rustam Hira Advocate* [2006] eKLR.

31. In *Otieno, Ragot & Company Advocates -vs- Kenya Airports Authority* [2021] eKLR, Murgor, JA, held thus:

“Relying on the case of *D Njogu and Company Advocates vs Kenya National Capital Corporation* (supra), the respondent's response was that the period from when interest will accrue is a matter to be left to the discretion of the court.... As such [Rule 7] deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the bill or fee note.

....



Additionally, it is distinctive that a review of the applicant's Bill of Costs does not disclose that the applicant included a charge forinterest at 14% per annum on his (her) disbursements and cost..." in the Bill of Costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure. Though the judge was entitled to exercise his discretion to award interest, there was no basis established for awarding the appellant interest at 14% per annum from the date of the Bill of Costs until payment in full."

We respectfully agree with that pronouncement as regards Rule 7 notwithstanding that the majority decision of the Court in that case was subsequently set aside by the Supreme Court. (See Kenya Airports Authority -vs- Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44(KLR)).

32. In our view a contextual reading of Rule 7 of the Advocates (Remuneration) Order, section 51 of the Advocates Act and our decided cases yields these six propositions as a starting point for analysis:
- a. An advocate is required to serve his client with the totality of the claims he has against the client in a Bill of Costs. That Bill serves the purpose of notifying the client what claims the advocates has against the client; and the basis for the claim. It is, therefore, incumbent upon the advocate to include the totality of his claim in the Bill of Costs so that the client can determine whether to contest it or not; and if to contest, what aspects of it to contest;
 - b. When a Bill of Costs has been served on the client and the amount is disputed or the client otherwise fails to pay, it proceeds to taxation. The Bill of Costs provides the only basis upon which taxation proceeds.
 - c. Once a Bill of Costs is taxed by a taxing master and a ruling arrived at, the door is closed on the advocate to add any further claims against the client based on their representation of the client in the underlying matter from the date the Bill of Costs was served on the client.
 - d. After the taxation, the total amount owing to the advocate is included in a Certificate of Costs. That amount is the totality of the indebtedness of the client to the advocate. The only other amount the advocate can charge from that date is interest on the taxed amounts; and costs for the taxation or adoption proceedings.
 - e. If the advocate (or the client) is dissatisfied with the ruling of the taxing master and the amount payable as contained in the Certificate of Costs, the only recourse allowed in law is to file a reference under Rule 11 of the Advocates (Remuneration) Order.
 - f. If such a reference is not filed, the amount reflected in the Certificate of Costs is the final amount payable to the advocate only subject to interest at court rates which is at the discretion of the court that adopts the Certificate of Costs as a judgment.
33. Turning to the current appeal, it is undisputed that:
- a. The advocate served the client with a Bill of Costs dated 22nd February 2021 physically on 3rd March 2021 and by email on 4th March 2021. The total amount claimed under that Bill was Kshs. 40,100,701.20.



- b. The advocate's Bill of Costs as drawn, served and filed in court, did not include the permissible interest of 14% p.a.
 - c. The advocate's Bill of Costs was taxed to Kshs 414,416.77 by Hon S. Githongori on 18th November 2021.
 - d. Upon a reference by the appellant and a ruling delivered on 22nd August 2022 the advocates bill of costs was re-taxed to Kshs 26,449,775.
 - e. A Certificate of Costs dated 9th January 2023 was issued to the advocate for Kshs 26,449,774.64.
 - f. The advocate did not file any reference under Rule 11 of the Advocates (Remuneration) Order to dispute any amounts taxed afresh or the total amount included in the Certificate of Costs dated 9th January 2023. The client, also, did not file a reference.
 - g. The advocate filed an application under section 51(2) of the Advocates Act for the Certificate of Costs to be adopted as a judgment together with interest on the judgement at 14% p.a. from the date of filing the Bill of Costs on 22nd February 2021. The High Court so adopted the Certificate of Costs as a judgment in its ruling dated 23rd June 2023 but declined to award interest at 14% p.a.
34. From our understanding 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 dated 10th January 2023 filed under section 51(2) of the Advocates Act. The appellant insists that he was allowed to do so any time before the taxed amount was paid by the respondent and that, conversely, the court was obligated to award them the interest for the reason that the taxed amount was yet to be paid.
35. From the reading 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%p.a. 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.
36. 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, if so minded, must challenge the omission in a reference to the court under Rule 11 of the Advocates (Remuneration) Order. The appellant did not do so in the reference dated 6th December 2021. 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.
37. Our understanding of 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. 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 discouragement 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. This also



encourages clients to promptly pay the amounts due to the advocate as claimed in the Bill of Rights or raise an objection promptly.

38. 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. The only reference that was filed was dated 6th December 2021 which majorly complained about the instruction fees. 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 her discretion in disallowing the claim.

39. The upshot is that the appeal lacks merit and is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

W. KARANJA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, C.Arb. FCIArb.

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

