



Muri Mwaniki & Wamati Advocates v Museum View Office Suits Limited (Environment and Land Miscellaneous Application 28 of 2018) [2025] KEELC 7566 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7566 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 28 OF 2018
AY KOROSS, J
NOVEMBER 4, 2025

BETWEEN

MURI MWANIKI & WAMATI ADVOCATES ADVOCATE

AND

MUSEUM VIEW OFFICE SUITS LIMITED CLIENT

RULING

1. The advocates' notice of motion application dated 28/11/2024 is the subject of this ruling. It is expressed to have been filed under the provisions of Section 51(2) of the *Advocates Act*, Paragraph 7 of the Advocates (Remuneration) Order, and Order 51 Rule 1 of the Civil Procedure (Amendment) Rules, 2020. This motion seeks the following orders from this court:
 - a. Judgment be entered for the advocate against the client for the sum of kshs. 4,386,051/=) in costs certified herein by the deputy registrar on 29/10/2024.
 - b. The said sum of Kshs. 4,386,051/= in costs be paid with interest at the rate of 14% per annum from 1/09/2018, being the date one (1) month after the service of the bill of costs on the client till payment in complete pursuant to Paragraph 7 of the Advocates (Remuneration) Order, 2009.
 - c. The costs of this motion be awarded to the advocate.
2. The motion is based on the grounds listed on its face and Martin G. Mwaniki's supporting affidavit, who is the advocate's partner, sworn on 28/11/2024. A summary of the grounds in support of the motion is: a) on 25/09/2024, the advocate's advocate/client bill of costs was taxed at kshs. 4,386,051/=, which costs were certified by the certificate of taxation dated 29/10/2024; b) pursuant to Paragraph 7 of the Advocates (Remuneration) Order, 2009, the advocate is entitled to interest on the said taxed costs at a rate of 14% per annum from 1/09/2018, being one (1) month after the service of the bill of



costs on the client, until payment in full; c) the client has not yet fully settled the taxed costs; and, d) the advocate wishes to commence execution proceedings against the client, and the retainer is not disputed.

3. In opposing the motion, the client, by the affidavits of its director, John K Wambugu, filed 2 sets of affidavits deposited on the respective dates of 12/02/2025 and 10/03/2025. It is apparent that there was an oversight in filing the 2nd one, as they both raise similar depositions. Be that as it may, the 2nd latter affidavit is improperly on record, and it is hereby expunged.
4. Consequently, this leaves us with the first affidavit in which he swears, inter alia: a) that this honourable court lacks jurisdiction to award the advocate interest on the taxed costs at the rates prayed for, as the advocate should have requested the same when filing the bill of costs; b) that there is a pending application in the Court of Appeal, being Civil Appeal No. E669 of 2024 by the client, and its outcome, if favourable, is likely to influence the course of this matter. As such, it should exercise its discretion and grant an injunction; c) that it is only fair and in the interest of justice for the court to stay any determination in this matter pending the outcome of the case before the Court of Appeal; d) that this is necessary to protect the interests of the client and to prevent subversion of justice should the appeal succeed before the Court of Appeal; and finally, e) that the advocate will not be prejudiced.
5. Following the court's directions, the advocate acting in person submitted their written arguments dated 23/06/2025. The court has carefully considered the advocate's arguments, which are supported by relevant laws and case precedents. However, unfortunately, the court did not receive any submissions from the client, as their counsel filed none on record as at the time of penning this decision. Thus, having carefully considered the motion, its grounds, affidavits and advocate's submissions, the following issues, which shall be handled separately and sequentially, arise for determination.
 - a. Whether this court should enter judgment as sought.
 - b. The circumstances and timing under which interest on taxed costs accrue.

a. Whether this court should enter judgment as sought

7. With regard to the pertinent legislation, as articulated in the motion and reaffirmed in the submissions of the advocate, Section 51(2) of the *Advocates Act* confers upon this court the authority to issue the judgment sought in the motion. This statutory provision explicitly states:

“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.”

8. This law clearly states that once a taxing master has assessed the costs, as shown by the court's ruling on 25/09/2024, a certificate of costs is issued, similar to the one in this case dated 29/10/2024. Once these are satisfied, it follows that, unless they are set aside and/or altered, or a dispute exists on retainer or if any proceedings are pending before a court of competent jurisdiction and evidence is provided to substantiate this, no other action would be required from the court except to enter judgment. This position of the law is supported by the binding Court of Appeal decision in Peter Odiwuor Ngoge T/ A O.P. Ngoge & Associates v Washington Jalango Okumu [2012] KECA 15 (KLR), which is relied upon by the advocate. The decision clarifies the court's role in handling such applications as follows:

“Her duty in our view, was to look into whether there was a certificate of taxation and whether it was properly drawn and then look into whether retainer was not disputed. If



these aspects were satisfied then the court should have acted and given summary judgment. Introducing a new concept called extent of retainer was in our view avoiding the issues that were before the learned Judge for Section 51(2) did not authorise the learned Judge to extend the requirements of the law.”

9. Therefore, this court concurs with the advocate’s argument that the certificate of taxation is conclusive and that this court possesses the authority to enter judgment for the taxed amount. It is observed that, although the client has stated in the affidavit that injunctive relief or a stay of proceedings should be granted, this court considers the manner in which these were sought-without filing a formal application, unusual in legal practice. Furthermore, the application supposedly pending before the Court of Appeal was not brought before this court. This court finds the relief sought by the advocate on this limb is merited.

b. The circumstances and timing under which interest on taxed costs accrue.

10. This court now addresses the final issue regarding whether interest on the advocate’s costs is payable, and if so, when such interest accrues. To resolve these pertinent issues, the court must refer to the relevant law, which is outlined in Paragraph 7 of the Advocates (Remuneration) Order, which states: -

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

11. In their submissions, the advocate interpreted this provision of law to mean that the interest is payable on the taxed costs at 14% per annum from 1 month after the service of the said bill of costs, being 1/09/2018. To support this line of interpretation, the advocate relies on the decision of Lubulellah & Associates Advocates v N K Brothers Limited [2014] KEHC 8685 (KLR), the persuasive decision states: -

“It is clear that the said Rule 7 deals with interest charged by an advocate of its claim for disbursements and costs which is chargeable from the expiration of one (1) month from the date of his delivery of its bill to its client. This interest is distinguishable from the interest that this court can award.

As this court held in the cases of HC Misc No 486 and 487 of 2012 E.W. Njeru & Co Advocates (Supra), if an advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. The court can only award the interest at court rates.”

It also relies on the decision of Okong’o Wandago & Company Advocates v Invesco Assurance Company Limited [2018] KEHC 3005 (KLR), which held:-

“The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of Costs. There is evidence that the bill of costs was received by the respondent on 6th July, 2018 and thirty (30) days from the delivery of the bill to the client expired on 6th August, 2018.”

12. These two determinations appear to be contradictory, as, on one hand, Lubulellah & Associates Advocates (Supra) observes that interest is forfeited when there is a failure to pursue interest on the bill of costs, as exemplified in the present case by the advocate’s bill of costs, which is dated 17/07/2018.



This stance supports the client’s deposition. Conversely, Okong’o Wandago (Supra) posits that interest is payable as long as the bill is served upon the client; however, this latter ruling did not consider the issue addressed by Lubulellah & Associates Advocates (Supra) and equally raised in the case at hand, where the bill of costs does not specify interest, thus making Okong’o Wandago (Supra) distinguishable.

13. Upon examining the issue of interest on costs, the Court of Appeal's decision in *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] KECA 587 (KLR) stipulates that the term “bill” as referenced in Paragraph 7 of the Advocates (Remuneration) Order pertains to a fee note on “disbursements and costs” rather than a bill of costs. Moreover, it is only after the issuance of such a fee note and the subsequent filing of a bill of costs seeking interest that an applicant in this case, the advocate, becomes entitled to such interest. Failure by an applicant to adhere to this procedure subjects itself to the court’s discretionary authority, as provided for under Section 26 of the *Civil Procedure Act*. The relevant extract on the decision states: -

“As such, the rule deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a feenote. 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 feenote. The learned judge’s reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.

Additionally, it is distinctive that a review of the applicant’s Bill of Costs does not disclose that the applicant included a charge for “...interest 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. For this reason, I consider it necessary to interfere with the award of interest.”

14. In this decision, Ouko JA (as he then was) reiterated the guiding principles in assessing interests on costs as follows: -

“Finally, regarding computation of interest, while I agree with Murgor, JA’s conclusion, that the award of interest is a discretionary matter, I wish only to emphasize, as Onguto, J. did in *Mercy Nduta Mwangi t/a Mwangi Keng’ara & Company Advocates vs. Invesco Assurance Company Limited* [2017] eKLR, that, that discretion comes with the power to reduce the period for which interest is payable. It extends to altering the rate at which interest is payable and even to withholding the entire interest payable in the interest of justice.”

15. Guided by *Otieno, Ragot & Company Advocates* (Supra), and considering that the notice to charge interest on costs was not included at the foot of the bill of costs dated 17/07/2018, this court exercises its discretionary power and determines that the advocate is only entitled to interest at the court rates from the date of this court's ruling on 25/09/2024. Consequently, this decision permits the notice of motion dated 28/11/2024 and grants the following final orders:

- a. Judgment is entered in favour of the advocate in the sum of Kshs. 4,386,051/= plus interest at the rate of 14% per annum from 25/09/2024 until payment in full.



b. Costs of the notice of motion are awarded to the advocate.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 4TH DAY OF NOVEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

04.11.2025.

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Lundi for the advocate/applicant.

Mr.Kiprotich holding brief for Iregi for client/respondent.

