



**Onyinkwa t/a Onyinkwa & Company Advocates v Kendagor
(Environment and Land Miscellaneous Application E006 of 2024)
[2025] KEELC 7823 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7823 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2024
CK YANO, J
NOVEMBER 13, 2025**

BETWEEN

**I ONYINKWA & D ONYINKWA T/A ONYINKWA & COMPANY
ADVOCATES APPLICANT**

AND

JOEL KENDAGOR RESPONDENT

RULING

1. Before court is the Applicant's Application dated 27th September, 2024 seeking for Orders: -
 - i. Spent
 - ii. That this Honourable Court be pleased to order that the Certificate of Costs issued on 7/6/2024 to the Applicant, as against the Respondent, be converted and/or adopted as the judgment and decree of this court and consequently, a judgment be entered for the applicant against the Respondent, for KShs. 122,585/-.
 - iii. That interest does accrue on the sum of KShs. 122,585/-, at the rate of 14% per annum, with effect from 16/2/2024 (the date of filing the Advocates-client bill of costs) until payment in full as prescribed under paragraph 7 of the Advocates Remuneration Order.
 - iv. That the costs of this application be provided for.
2. The Application is premised on the grounds set out on the face of it, and is supported by an Affidavit of even date sworn by Denis Onyimbo Onyinkwa. He deponed that on 11th July, 2019, the Respondent instructed the Applicant to represent him in Eldoret ELC J/R No. 5A of 2021 (Formerly HCCC Misc. No. 43 of 2002), in place of M/S Machio & Company Advocates. That pursuant to the said



instructions, they filed the necessary pleadings and acted for the Respondent until they were granted leave to cease from acting for him.

3. Mr. Onyinkwa deponed that thereafter, they prepared and forwarded a final fee note in respect to professional fees and disbursements to the Respondent for settlement. That the Respondent failed to settle the same, causing the Applicant to file an Advocate-Client Bill of Costs dated 14th February, 2024 which was taxed on 7th June, 2024 at the sum of KShs. 122,585/-. Mr. Onyinkwa averred that the Respondent has also refused to settle the taxed costs. That the said costs have and continue to accrue interests at the rate of 14% per annum since the date of filing the Bill of Costs as provided under Section 7 of the Advocates Remuneration Order.
4. Mr. Onyinkwa deponed that the Certificate of Costs has not been altered or set aside by the court, therefore this Court is clothed with unfettered jurisdiction to grant the orders sought. He deponed that no party will be prejudiced if the orders sought are granted. Further, that the Applicant stands to suffer irreparable loss if the application is not allowed.
5. The Application was served on the Respondent on 24th October, 2024 as indicated in the Affidavit of Service sworn by Bernard Nyagaka Obare dated 25th October, 2024. The Respondent did not file any response to the Motion. On 30th April, 2025 when this matter was first mentioned in this court, the Respondent was absent despite having been notified of the date. The court directed that the application be canvassed by way of written submissions. The Applicant had already filed their submissions on 12th February, 2025 and were directed to serve a copy on the Respondent, but he still did not respond or file his submissions.

Submissions:

6. In the Applicant's submissions, Counsel submitted that the Respondent was served with the Bill of Costs dated 14th February, 2024 but did not respond, so the taxation proceedings were unopposed. Counsel submitted that the Respondent had not opposed or challenged the Certificate of Costs issued in favour of the Applicant. Counsel cited Section 51(2) of the *Advocates Act*, and reasoned that the only other action required of the court is to enter judgment as prayed for in the application. Counsel argued that the Certificate of Costs is final as to the amount of costs, and it is in order that the court enter judgment in favour of the Applicant.
7. Counsel for the Applicant maintained that the Applicant should not be barred from enjoying the fruits of its hard work. Counsel also submitted that Paragraph 7 of the Advocates Remuneration Order provides for interest on the said costs at 14% per annum until payment in full, and that the interest is calculable after the expiration of one month from the delivery of the bill to the client. Counsel also relied on Section 26 of the *Civil Procedure Act* on interest. Counsel pointed out that the application is unopposed and should be allowed as prayed.

Analysis and Determination:

8. Having considered the application by the Applicant, the Applicant's Submissions and the authorities cited therein, the following issues arise for determination: -
 - i. Whether the Certificate of Costs issued on 7/6/2024 to the Applicant's should be converted and/or adopted as the judgment and decree of this court;
 - ii. Whether the Applicant is entitled to interest at 14% per annum; and
 - iii. Who shall bear the costs of this Application?



Whether the Certificate of Costs issued on 7/6/2024 to the Applicant should be converted and/or adopted as the judgment and decree of this court

9. The procedure for recovery of advocate/client taxed costs is found at Section 51(2) of the Advocates Act which provides that:-
51. General provisions as to taxation
- (1) ...
- (2) 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.
10. In other words, for any execution process to be set in motion for recovery of advocate/client taxed costs, the Applicant must first have their Advocate-Client Bill of Costs taxed. After taxation of the bill of costs between advocate and client, a certificate of taxation is issued. Where the taxation is not challenged, or where a reference is determined and the certificate of taxation is not altered or set aside, the certificate of taxation becomes final as far as the amount of costs is concerned.
11. However, execution can only be issued or levied on the Advocate-Client Costs after the certificate of taxation has been adopted by the judge as judgment of the court so that it becomes a decree of the court. It is only that decree that can be executed for recovery of the taxed costs. This process was summarised in *Lubulellah & Associates 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 the 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 judgement. 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 for the taxed sum indicated in the certificate of taxation that was issued on 25th November 2012.”
12. Going by Section 51 (2) of the Advocates Act, and the above cited authority, when determining an application such as this one, a court considers whether: -
- a. The costs have been taxed by and certified under the hand of the taxing master by a certificate of costs;
- b. The certificate of costs has not been set aside or stayed or appealed against on a reference filed upon it; and
- c. There is no dispute on retainer.
13. In the instant case, the Applicant has approached this court seeking a conversion of the Certificate of Costs dated 14th August, 2024 issued in his favour against the Respondent, into a judgment of the court. The Applicant annexed the Notice of Change of Advocates dated 11th July, 2019 showing that the firm was indeed instructed by the Respondent and the order granting it leave to cease from acting.
14. The Applicant also annexed the Advocate-Client Bill of Costs dated 14th February, 2024 and the certificate of costs. The Applicant informed this court that the taxation proceedings were not opposed,



and that the costs were taxed at KShs. 122,585/-. There is no evidence that the certificate of costs was challenged by way of a reference or on account of retainer.

15. The Certificate of Costs has thus not been set aside and remains valid. I am satisfied therefore that the Applicant has met the three conditions outlined above. As a result, the Applicant's prayer for conversion of the Certificate of Costs succeeds in terms that judgment is hereby entered for the Applicant against the Respondent for the sum of the taxed costs of Kshs. 122,585/=.

Whether the Applicant is entitled to interest at 14% per annum;

16. Turning to the issue of interest, Rule 7 of the Advocates Remuneration Order provides for interest on taxed Advocate/Client bills of cost and states that.

7. Interest may be charged

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.

17. Per Rule 7 above, an advocate does have the right to claim interest on his disbursements and costs at 14% per annum. But for an Advocate to be able to claim interest, Rule 7 requires that the bill must have been served on the client. Therefore, the Applicant must avail evidence of service of the bill upon the client.
18. In the instant case, the Applicant filed an Affidavit of Service sworn by Benard Nyagaka Obare dated 1st January, 2025 stating that he served the Respondent with documents among them the Bill of Costs dated 14th February, 2024. The said service was however effected on 2nd January, 2025. Although the Applicant claim to have served the Bill of Costs on 16th February, 2024 they did not avail proof of this earlier service. Ideally therefore, the Applicant would have been entitled to the award of interest on the amount taxed from 7th January, 2025.
19. However, courts have interpreted Rule 7 to include a requirement that the client must be made aware that the Advocate intends to charge the 14% per annum interest on the taxed costs. In *Otieno, Ragot & Company Advocates vs Kenya Airports Authority (2021) KECA 587 (KLR)*, Murgor, JA held as follows:-

“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.”



20. In a more recent case, the Court of Appeal in a related matter, being Otieno, Ragot & Company Advocates vs Kenindia Assurance Co. Ltd (Civil Appeal 129 of 2019) (2023) KECA 1398 (KLR), Joel Ngugi JA, held that:-

- “ 30. 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 under section 51(2) of the *Advocates Act*. The appellant insists that he was allowed to do so and that, conversely, the Court was obligated to award them the interest.
31. As should be obvious from the unbundling 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% 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.
32. 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 must challenge the omission in a reference to the court under rule 11 of the Advocates Remuneration Order. 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*.
33. To reiterate, 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 disincentive 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. Conversely, it incentivizes clients to promptly pay the amounts due to the advocate as claimed in the Bill of Rights or raise an objection promptly.
34. 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. 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 his discretion in disallowing the claim.”



21. Similarly, in the 2023 decision made in *Otieno, Ragot & Company Advocates vs Kenindia Assurance (Ibid)*, Kiage, JA agreed with the above position and on his part, further held that:-

“ 39. That last phrase of the rule, in the nature of a proviso, speaks to an important policy consideration: the claim must be made in timely fashion. In case the client decides to pay the bill, it is not open to the Advocate to thereafter have a Eureka Moment, recall the existence of the right, and claim interest at 14% per annum.

40. This understanding is consistent with the unarguable need for a client to be notified in advance of the advocate’s intent to claim the higher interest from the expiry of one month after delivery of the bill. Thus is a client forewarned to pay up, and speedily so, or else. And it is a plain prerequisite of essential fairness.

41. By the same token, it cannot be open to the advocate to conjure up the 14% per annum interest on his costs if he never notified the client in like timely fashion. I would go as far as to say that an advocate intent on exercising the right should place a cautionary notice on the bill he delivers, potentially and ultimately useful to himself: ‘Take notice that should this amount or any part thereof remain unpaid at the expiry of 30 days from the date hereof, such outstanding sum shall thereafter attract, and I shall claim, interest at the rate of 14% per annum until payment in full as provided under rule 7 of the Advocates Remuneration Order.’ Or words to such effect.”

22. An advocate therefore has the right to claim interest on his disbursements and costs at 14% p.a. under rule 7 of the Advocates Remuneration Order. However, in order for the advocate to claim such interest, it is a necessary requirement that they inform the client of their intention to claim such interests, and that the Certificate of Costs include the interest so claimed and charged. It is not open to the advocate to conjure up the 14% p.a. interest on his costs if he never notified the client in like timely fashion.

23. I have looked at the Advocate-Client Bill of Costs dated 14th February, 2024 filed in the instant suit, and it is evident that the Applicant failed to give notice of their intention to claim interest to the client. The Applicant also did not include the claim for such interest at the rate claimed in the bill of costs dated 14th February, 2024. As a result, when the Bill was taxed, the award of interest was not included and it does not feature in the certificate of costs issued on 14th August, 2024. For the above reasons, the Applicant cannot at this juncture claim interest and neither are they entitled to it. The prayer for interest at 14% per annum thus fails.

Who shall bear the costs of the Application?

24. With regards to Costs of this application, Section 27(1) of the *Civil Procedure Act* provides as follows:

27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that



the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

25. According to Section 27(1) above, the general rule is that costs of a suit follow the event, but they are granted at the discretion of the court. At the proviso thereto the court may nonetheless, for good reason, depart from this general rule.
26. In this suit, it is clear that the Applicant only partially succeeded in his claim. In addition, it is also evident that the Respondent did not participate in these proceedings. Bearing this in mind, I find that a departure from the general rule is justified and hereby direct that each party bear their own costs.

Orders:

27. Consequently, the court finds and holds that the Applicant's Application dated 27th September, 2024 partially succeeds, and the following orders issue therefrom: -
 - i. The Certificate of Costs issued on 7/6/2024 to the Applicant, as against the Respondent, be and is hereby converted and/or adopted as the judgment and decree of this court and consequently, a judgment be and is hereby entered for the applicant against the Respondent, for KShs. 122,585/-.
 - ii. Each party to bear their own costs.
28. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 13TH DAY OF NOVEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Ms. Nyabuto for the Applicant.

No appearance for the Respondent.

Court Assistant - Laban.

