

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC. CIVIL APPLICATION NO. 229 OF 2018

**IN THE MATTER OF TAXATION OF AN ADVOCATE AND
CLIENT BILL OF COSTS**

BETWEEN

SHAH **AND** **PAREKH**
ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

**KENINDIA ASSURANCE
COMPANY
LIMITED.....CLIENT/RESPONDENT**

RULING

The Application

1. For determination is the Notice of Motion (the Application) dated 5th February 2025 filed by **Shah & Parekh Advocates** (the Applicant). The grounds in support of the Application are laid out on its face and in the Supporting Affidavit sworn by **Hasmukhrai Manilal Parekh**. The Application seeks the following orders:

(i) THAT this Honourable Court be pleased to adopt

(a) Altered Certificate of Taxation dated 26.03.2024 issued herein in the sum of Kshs. 841,661/- only,

(b) Certificate of Taxation dated 9.10.2024 issued herein in the sum of Kshs. 207,365/- only, and

(c) Certificate of Taxation dated 10.12.2024 issued herein in the sum of Kshs. 50,000/- only, certifying that the Applicant has been awarded the said sums against the Respondent Kenindia Assurance Company Limited and enter Judgment for the aggregate sum of Kshs. 1,099,026/-.

(ii) THAT this Honourable Court be pleased to grant interest at 14% per annum on Kshs. 907,847.71 as per calculation shown herein, interest calculated up to and including 15.01.2025 and thereafter at 14% interest per annum on the said sum of Kshs. 907,847.71 until payment in full.

(iii) THAT the costs of the application be awarded to the Applicant in any event.

(iv) THAT upon entering the aforesaid Judgment, the Respondent be given credit of Kshs. 841,661/- paid by the Respondent on 20.05.2024.

2. The deponent of the Supporting Affidavit has stated that the Applicant filed its Advocate-Client Bill of Costs dated 9.04.2018 against the Respondent in the present matter, seeking costs to the tune of Kshs. 2,766,092/- in respect of services rendered by the Applicant for the Respondent in HCCC No. 2842 of 1997; Nairobi Court of Appeal Civil Application No. 67 of 1999; and Nairobi Court of Appeal Civil Application No. 68 of 1999. That the Bill of Costs was served upon the Respondent on 15.04.2018 and was eventually taxed at a sum of Kshs. 413,577/- vide a taxation ruling delivered on 15.05.2020.

3. It is deposed that the Applicant thereafter lodged a Reference challenging the aforementioned taxation ruling, which was allowed by the High Court, with the Applicant being awarded

a sum of Kshs. 841,661/- resulting in the issuance of an Altered Certificate of Taxation dated 26.03.2024. That Altered Certificate of Taxation has not been varied or set aside and is therefore final on the issue of costs.

4. It is further deposed that subsequently, the Applicant delivered a letter dated 19.03.2024 to the Respondent's advocates, demanding interest on the taxed sum of Kshs. 841,661/- at a rate of 14% p.a. from 15.06.2018 until payment in full, pursuant to Paragraph 7 of the Advocates (Remuneration) Order which provides that an advocate is entitled to charge interest on a Bill of Costs, at the rate of 14% p.a. from the expiration of one (1) month from the date of delivery of the Bill to the client. That the Respondent settled the taxed sum of Kshs. 841,667/- on 20.05.2024 but did not make any payments on interest.

5. The Applicant has stated that a separate Bill of Costs dated 4.04.2024 seeking a sum of Kshs. 447,365/- from the Respondent was filed by the Applicant and was taxed at a sum of Kshs. 207,365/- resulting in the issuance of a Certificate of

Taxation dated 9.10.2024 but that the Respondent has failed and/or refused to settle the balance of the Applicant's costs and interest, despite demand.

Replying Affidavit

6. The Respondent has opposed the Application through the Replying Affidavit sworn by **Judith Onyango** on 2.06.2025. The Respondent has stated that the Application has been brought in bad faith and that it lacks merit; that no interest was awarded by the learned taxing master and that the subject of interest did not arise or feature in the taxation proceedings or at all material times thereafter; that the respective Bills of Costs were consequently taxed in the absence of interest and that the Applicant cannot be heard to invoke the subject of interest at the enforcement stage of these proceedings.
7. The Respondent takes the view that the Respondent, having settled the taxed costs of Kshs. 841,661/- the instant Application has been overtaken by events and ought to be

wholly disregarded and dismissed for want of merit, with costs to the Respondent.

8. The Applicant filed a supplementary affidavit sworn by advocate **Hasmukhrai Manilal Parekh** on 14.07.2025 in which he has stated that there was a delay on the part of the Respondent in effecting service of the Replying affidavit upon the Applicant; that the Respondent is intent on delaying the matter further and that the legal position is clear on the impact of a Certificate of Taxation and therefore, the averments made by the deponent in the Replying Affidavit are unsatisfactory.

Submissions

9. The Applicant has submitted that the Respondent having failed to file a reply to the instant Application within the directed timelines, the court ought to consider the Application *ex parte*, pursuant to Order 51, Rule 14(4) of the Civil Procedure Rules (CPR).

10. The Applicant has submitted that it is entitled to the interest sought at a rate of 14% p.a., pursuant to Paragraph 7

of the Advocate (Remuneration) Order which entitles an advocate to interest on the taxed costs; that there is no legal provision which precludes the Applicant from claiming interest on taxed costs, even where the same was not specifically sought in the Bill of Costs; that interest ought to accrue from 15.06.2018 being one (1) month from 15.05.2018, the date on which the Respondent received the Bill of Costs and that the Respondent merely paid a sum of Kshs. 841,661/- being the principal costs taxed on the initial Bill of Costs, but is yet to settle the interest thereon.

11. It is the Applicant's contention that the Respondent has likewise failed and/or neglected to settle the taxed costs of Kshs. 207,365/- arising from the Certificate of Taxation dated 9.10.2024 as well as the costs resulting from the Certificate of Costs dated 10.12.2024. The Applicant relied on **Shah and Parekh v Kenindia Assurance Company Limited [2024] KEHC 4441 (KLR)** where the court entered judgment pursuant to the Certificates of Taxation issued in that matter,

and further awarded the Applicant interest on the taxed amounts.

12. The Respondent, on the other hand, has submitted that the Applicant is not entitled to claim interest on the taxed costs, since the interest was neither sought in the fee note nor sought by way of the Bill of Costs nor was an order for the same made in the respective Certificates of Taxation/Costs and that the Applicant did not invoke Rule 7 of the Advocates (Remuneration) Order on the subject of interest, or challenge the omission to award any interest, in its Reference.

13. The Respondent has relied on the case of **Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd [2023] KECA 1443 (KLR)** in which the Court of Appeal reasoned that for an advocate to claim interest on taxed costs at the stipulated rate of 14% p.a., the same must be claimed in the fee note or the Bill of Costs, otherwise, such advocate loses the right to subsequently claim such interest. The Court of Appeal proceeded to reason that an advocate cannot purport

to introduce the subject of interest at the enforcement stage of the proceedings.

14. It is the Respondent's argument that the Applicant is therefore not entitled to any interest and that the instant Application ought to be either struck out or dismissed, with costs.

15. The Applicant filed Supplementary Submissions in which it is contended that the Respondent having filed written submissions outside the directed timelines, the same ought not to be considered by this court; that the provision of Section 51 of the Advocates Act is restricted to costs taxed pursuant to a Certificate of Taxation and does not extend to interest; that the subject of interest constitutes an entirely distinct issue which need not feature in a Certificate of Taxation, but may be sought separately; that decisions pertaining to the issue of interest awardable upon taxation of a Bill of Costs have been contradictory and that the finding by the Court of Appeal in the above-cited authority of **Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd** should not be

adopted by this court and that Section 26 of the Civil Procedure Act (CPA) and Section 51 of the Advocates Act bestow discretionary power upon the courts, to award interest.

Analysis and Determination

16. I have considered the Application and the Replying Affidavit. The Applicant raised issue with the Replying Affidavit and submissions by the Respondent to the effect that these were filed outside the timelines directed by this court and should therefore not be considered.

17. I have read the court file record. It shows that on 20/05.2025 when the parties' respective advocates attended this court, the Respondent was directed to file a response to the Motion within a period of seven (7) days from that date and the parties were equally directed to file written submissions. On 25.06.2025, when parties attended court, counsel for the Applicant acknowledged receipt of the Replying Affidavit, the same having been served upon him on the previous day. He sought leave of the court to put in a further/supplementary affidavit in rejoinder. Counsel for the Respondent, on his part,

apologized for the delay in filing the Replying Affidavit. This Court granted leave to file further/supplementary Affidavit and extended timelines for filing submissions.

18. On 2.09.2025, Counsel for the Applicant informed Court that the Respondent had filed written submissions that morning and thus objected to having the same admitted on the record. This court, upon cautioning the Respondent's counsel for the late filing, went on to admit the written submissions and granted counsel for the Applicant leave to file supplementary submissions.

19. From the foregoing circumstances, it is apparent that the concerns pertaining to late filing of both the Replying Affidavit and written submissions by the Respondent were previously brought to the attention of this court and were similarly considered and addressed by the Court in giving its directions. Similarly, despite the Respondent's delay in filing the Replying Affidavit and the submissions, the Applicant was granted an opportunity to offer a response thereto. In the circumstances, the Applicant's arguments on the issue of late filing cannot be

sustained, the same having been raised earlier and having been addressed by the court.

20. Turning on the merits of the Application, I have considered the same and the grounds advanced to support it. The application seeks entry of judgment pursuant to the three (3) Certificates, namely:

- (i) The Altered Certificate of Taxation dated 26.03.2024 for a sum of Kshs. 841,661/-,**
- (ii) The Certificate of Taxation dated 9.10.2024 for a sum of Kshs. 207,365/-and,**
- (iii) The Certificate of Costs dated 10.12.2024 to the tune of Kshs. 50,000/-, totaling a sum of Kshs. 1,099,026/-.**

21. The Application also seeks interest on the taxed costs at a rate of 14% p.a. and to have the sum of **Kshs. 841,661/-** earlier paid by the Respondent, credited to the judgment sum.

22. **Section 51(2)** of the Advocates Act provides that a certificate of taxation is final unless and until it is set aside or varied. The court in the case of **Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR** echoed the above position, in the following manner:

“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.”

23. That decision was re-affirmed by the Court of Appeal in the case of **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR.**

24. Court record shows that the Applicant filed an Advocate-Client Bill of Costs dated 9.04.2018 (**Annexure HM 3**) seeking a sum of **Kshs. 2,766,092/-** against the Respondent. The Bill was taxed at a sum of **Kshs. 413,577/-** vide a taxation ruling delivered on **15.05.2020**. The Applicant was dissatisfied. He filed a Reference before the High Court. The Court, through a ruling and order made on **31.01.2024**, allowed the Reference and substituted the earlier taxed costs with a sum of **Kshs. 791,661/-** plus costs assessed at a sum of **Kshs. 50,000/-**, giving a total of **Kshs. 841,661/-**. The taxed

sum of **Kshs. 841,661/-** resulted in issuance of the Altered Certificate of Taxation dated **26.03.2024 (Annexure HM 1)**.

25.The record, further, shows that the Applicant subsequently filed another Bill of Costs dated **4.04.2023** seeking a sum of Kshs. 207,365/- from the Respondent, in respect of applications dated **11.06.2020** and **12.05.2020** filed in the present matter. It was not opposed. It was taxed as prayed by way of a taxation ruling delivered on **18.09.2024** resulting in a Certificate of Taxation dated **9.10.2024 (Annexure HM 6)**.

26.The court record does not show that any of the abovementioned Certificates of Taxation have been challenged, altered or varied. Consequently, this court is persuaded to enter judgment in accordance with the amount indicated in the certificate of taxation.

27.I have considered the Certificate of Costs dated **10.12.2024** for a sum of Kshs. 50,000/- (**Annexure HM 8**). My understanding is that this amount is derived from the costs earlier assessed by the court, which costs were incorporated in the Altered Certificate of Taxation. As such, the court does

not deem it necessary to enter judgment on the said Certificate of Costs.

28. The subject of interest on the taxed amount is contested by the Respondent. I have read **Rule 7** of the **Advocates (Remuneration) Order** which applies to this issue. It provides that:

“An advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

29. The Applicant has maintained that it is lawfully entitled to claim interest on the taxed amounts, at a rate of 14% p.a. under **Rule 7** of the Advocates (Remuneration) Order. The Respondent, on the other hand, has refuted the Applicant's claim for interest on the basis that no interest was sought in the taxation proceedings or by way of Reference and that no interest was awarded to the Applicant whether by the court upon hearing the Reference, or in the Certificate of Taxation.

30.

31. From a perusal of the record, the court has observed that interest was neither sought in the Applicant's Bill of Costs nor litigated upon in the taxation proceedings or at the stage of Reference. The Court did not make any award on interest and that the subject of interest did not feature in any of the Certificates of Taxation consequently issued. It is apparent from the record that the Applicant has now belatedly purported to claim interest from the Respondent at the above rate of 14% p.a. vide correspondences dated 19.03.2024 (**Annexure HM 2**) and (**Annexure HM 7**) and by way of the instant Motion.

32. The question of **Rule 7 of the Advocates (Remuneration) Order** on the subject of interest was aptly discussed by the Court of Appeal in the case of **Otieno, Ragot & Company Advocates v Kenindia Assurance Co. Ltd [2023] KECA 1398 (KLR)**, where the Court of Appeal rendered the following on the consequence that would befall a

party who omits to claim or seek interest at the appropriate stage:

“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.

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.

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.

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.”

33. From the above cited case, this court is of the view that the omission by the Applicant to claim interest on the taxed sums at the appropriate stages of the present matter would disentitle it from an award of interest at this stage in the proceedings. Consequently, the court declines to make any award on interest.

34. Lastly and on the order seeking to credit the sum of Kshs. 841,661/- to the Respondent, it is not disputed that the Respondent paid the said sum on 20.05.2024, pursuant to the ruling on the Reference and the resulting Altered Certificate of Taxation dated 26.03.2024 (**Annexure HM 1**).

35. In the absence of any contrary evidence therefore, the court is persuaded to credit the above sum to the amount claimed by the Applicant and from the Respondent, on taxed costs.

36. Consequently, the Notice of Motion dated 5.02.2025 partially succeeds. I proceed to grant the following orders:

a) Judgment be and is hereby entered in favour of the Applicant and against the Respondent for the sum of Kshs. 1,049,026/-.

b) The sum of Kshs. 841,661/- shall be credited to the Respondent thereby leaving an outstanding balance of Kshs. 207,365/- arising from a) above.

c) The Applicant shall have costs of the Motion, assessed at a sum of Kshs. 3,000/-.

37. Orders shall issue accordingly.

Dated, signed and delivered this 27th November 2025.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Mr. Parekh. for the Applicant
2. Mr. Nyamwaya for the Respondent