



**Kajwang & Kajwang Company Advocates v Board of Trustees,
National Social Security Fund (Miscellaneous Application 276 of 2016)
[2025] KEHC 17844 (KLR) (Commercial and Tax) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 276 OF 2016
FG MUGAMBI, J
NOVEMBER 28, 2025**

BETWEEN

KAJWANG & KAJWANG COMPANY ADVOCATES APPLICANT

AND

**BOARD OF TRUSTEES, NATIONAL SOCIAL SECURITY
FUND RESPONDENT**

RULING

Background and introduction

1. This Ruling is in respect to the Notice of Motion application dated 6th February 2018. The application seeks that this court enters judgement against the respondent for the sum of Kshs. 32,646,562.50/= as it appears on the Certificate of Taxation dated 9th January 2017 with interest from the date of filing this application until payment in full and for orders that the applicant be allowed to execute the judgement against the respondent.
2. The application is supported by the affidavit of Ibrahim Oduor sworn on even date. The applicant avers that the taxing master, in a ruling dated 9th January 2017, taxed the advocate-client Bill of Costs dated 14th January 2016 at Kshs. 32,646,562.50/= but their efforts to have the Certificate of Costs arising from that taxation settled by the respondent, has gone futile.
3. The application is opposed by the respondent through the replying affidavit sworn on 30th January 2025 by Ettah Muango on the grounds that the respondent was denied an opportunity to be heard during the taxation process. The respondent argues that entering judgement would be unjust and contrary to public interest as it is a public body that provides social protection to Kenyan workers. On the issue of execution, the respondent argues that this court lacks jurisdiction to grant the prayer as the



process of execution is provided for under Section 58(3) of the [National Social Security Fund Act](#), Cap 258 Laws of Kenya.

Analysis and determination

4. The application was canvassed by way of written submissions, which I have equally considered. The issues that stand out for determination are:
 - i. Whether judgment should be entered for the sum of Kshs.32,646,562.50/=;
 - ii. Whether the interest claimed should be granted; and
 - iii. Whether an order for execution do issue.
 - iv. Who should pay the costs of the application.
5. On the first issue, the court in Republic V City Council of Nairobi Ivyland Park Ltd (interested party) Ex-parte Inderpal Singh & 2 Others, (2021) eKLR held that a Court may not enter judgment on a Certificate of Costs where the certificate has been set aside, varied and/or altered or the retainer is disputed. The converse is true. In the present matter, the Certificate of Costs arising from the advocate–client Bill of Costs was set aside by a Ruling of this court delivered on 29th April 2020 (Justice G. L. Nzioka). However, the orders in that Ruling were vacated after the respondent failed to comply with the conditions imposed therein.
6. Consequently, it is my view that since the respondent did not meet the conditions precedent to setting aside the Bill of Costs, the taxing master’s decision was reinstated and remains valid. That being the case, nothing more is left for this Court to do but to enter judgment as I hereby do, for the applicant against the respondent in the sum of Kshs. 32,646,562.50/= as per the Certificate of Taxation dated 13th February 2017.
7. On the issue of interest, the applicant contends that interest should accrue from the date of filing the present application. The respondent, however, argues that the applicant is not entitled to such interest, having failed to include it in the Bill of Costs. Upon perusal of the Bill of Costs dated 14th January 2016, I confirm that the question of interest was not raised therein.
8. The applicant relied on the decision in Lubellah & Associates Advocates V N.K Brothers Limited, [2014] KEHC 7393 (KLR) to support the claim for interest. In that case, the court observed:

“As this court held in HC Misc Nos. 486 and 487 of 2012, E.W. Njeru & Co Advocates (supra), if an advocate files a Bill of Costs without raising the issue of interest, then he forfeits interest as provided under Rule 7 of the Advocates Remuneration Order.”
9. Furthermore, the Court of Appeal in Otieno, Ragot & Company Advocates V Kenindia Assurance Co Ltd, [2023] KECA 1443 (KLR), underscored that an advocate seeking to recover the statutory interest of 14% per annum under Rule 7 of the Advocates Remuneration Order must expressly claim it in the fee note and/or Bill of Costs. Failure to do so results in forfeiture of the right to claim such interest at a later stage.
10. In light of these authorities, I find that no interest is payable in the present case, the applicant having failed to demand interest at the time of preparing or serving the Bill of Costs upon the respondent.
11. Turning to the third issue of execution against the respondent, Section 58(3) of the [National Social Security Fund Act](#), which establishes the respondent, is couched in similar terms to Section 25 of



the *Government Proceedings Act*, in so far as it shields the respondent from execution. Section 58(3) expressly provides:

“Notwithstanding any other written law, the assets of the Fund shall not be liable to attachment under any process of law.”

12. This provision makes it clear that although the respondent is a parastatal established as a corporate entity capable of suing and being sued, by virtue of Section 58(3) it is exempted from ordinary execution. That being the case, I hold the view that execution must follow the process outlined under Section 21 of the *Government Proceedings Act*.
13. This section provides an alternative mechanism through which a successful litigant may enforce a judgment against government entities. Under this provision, once a Certificate of Order against the Government is issued, the accounting officer of the relevant department is obligated to satisfy the decree by paying the sums due. I believe therefore that that is the process to follow in execution against the respondent since execution by way of attachment or sale of assets is expressly barred.
14. It would otherwise be untenable to suggest that a successful litigant would be left without recourse, for such an interpretation would amount to an absurdity and defeat the very purpose of adjudication.

Disposition

15. Accordingly, the application dated 6th February 2018, partially succeeds and is allowed in the following terms:
 - i. Judgment be and is hereby entered in favour of the advocate/applicant against the client/respondent in the sum of Kshs.32,646,562.50/= as per the Certificate of Taxation dated 13th February,2017.
 - ii. Each party shall bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025.

F. MUGAMBI

JUDGE

