



**Theuri & Njuguna t/a Kinyanjui Njuguna & Co Advocates v Board of Trustees
National Social Security Fund (Miscellaneous Application E751 of 2021)
[2025] KEHC 17863 (KLR) (Commercial and Tax) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E751 OF 2021
FG MUGAMBI, J
NOVEMBER 28, 2025**

BETWEEN

**JOHN KINYANJUI THEURI & KARIUKI NJUGUNA T/A KINYANJUI
NJUGUNA & CO ADVOCATES APPLICANT**

AND

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

RULING

Background and Introduction

1. This Ruling determines the application dated 13th December 2024 in which the advocate seeks entry of judgment for Kshs 514,813.84/= plus interest at 14% per annum from 20th April 2017 until payment in full. The application is supported by the affidavit of Kinyanjui Theuri, a partner in the firm of Kinyanjui Njuguna & Company Advocates, sworn on even date. It is opposed by the affidavit of Ettah Muango sworn on 10th June 2025. Parties filed their respective submissions which I have equally considered.

Analysis and Determination

2. The advocate's claim is anchored on the Certificate of Taxation dated 19th November 2024. It is also not in dispute that that the advocate had previously filed an application dated 12th August 2022, seeking to set aside the decision of the taxing officer delivered on 28th July 2022. That application was dismissed by this Court on 16th June 2023. Importantly, in the said application, the advocate did not raise any issue with respect to a retainer. It is also evident that the question of retainer was neither canvassed



nor adjudicated upon by the taxing officer. The issue has only now been introduced in the response to the current application.

3. Having already rendered a decision on the application of 12th August 2022, I find that this Court is now functus officio, its jurisdiction over the matter having been exhausted. The principle of finality applies, and the Court cannot reopen issues that were not raised at the appropriate stage.
4. Under Section 51(2) of the *Advocates Act*, once a Certificate of Costs has been issued and is neither varied nor set aside, as is the case in this instance, it becomes conclusive as to the amount due. This position was affirmed by the Court of Appeal in the case of *Otieno, Ragot & Company Advocates V Kenya Airports Authority*, [2021] eKLR where it was held that once a Certificate of Costs was issued and there was no reference against the decision of the taxing master, and the certificate of costs had not been set aside and/or altered, no other action was required save for entry of judgment by the court. Accordingly, the advocate is entitled to judgment for the principal sum of Kshs. 514,813.84, as per the unchallenged Certificate of Taxation.
5. The advocate also seeks interest at 14% per annum from 20th April 2017. However, upon scrutiny of the Bill of Costs dated 5th October 2021, the application, and the ruling of the taxing officer, it is clear that no prayer for interest was made in any of those documents, save in the current application. Under Rule 7 of the Advocates Remuneration Order, interest on disbursements and costs is not automatic. The Rule provides:

“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.”
6. The operative requirement is that the claim for interest must be raised prior to payment or tendering of the bill in full. In this case, the advocate did not raise the claim for interest at the appropriate stage, either in the bill of costs or before the taxing officer. The claim has only been introduced in the current application. Therefore, I find no basis to award interest, and the prayer for interest is declined.

Disposition

7. Accordingly,
 - i. Judgment is entered in favour of the advocate for the sum of Kshs. 514,813.84.
 - ii. The prayer for interest at 14% per annum is declined.
 - iii. 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

