

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL AND TAX DIVISION**  
**HCCOMMISC. NO. E514 OF 2024**

**ARTHUR KONYE IGERIA**

**BENSON NJERI NGUGI**

**DAVID NGUMBU NJOROGE**

**JILLIAN MUTHONI NDIRANGU T/A**

**IGERIA AND NGUGI  
ADVOCATES.....APPLICANT/ADVOCATES**

**VERSUS**

**JETWAYS AIRLINES  
LIMITED.....RESPONDENT/CLIENT**

**RULING**

1. This is a Ruling in respect to the Notice of Motion dated 10<sup>th</sup> December, 2024. The Applicant filed the Notice of Motion dated 10<sup>th</sup> December 2024 seeking the following orders;

*a) THAT the Certificate of Taxation dated 20<sup>th</sup> November 2024 for a sum of Kshs.1, 651, 319.76 be adopted as a decree of this Honourable Court.*

*b) THAT Judgment be entered in favour of the Applicants/Advocates against the Respondent/Client for the taxed sum of Kshs.1, 651, 319.76 together with*

*interest at 14% per annum from the date of service of the Bill of Costs that is from 12<sup>th</sup> July 2024 until payment in full.*

*c) THAT the costs of this Application be provided for.*

*d) THAT this Honourable Court be pleased to make such further or other orders as it may deem fit and just to grant.*

### **Background Facts**

2. The Application was supported by the Affidavit of **Jillian Ndirangu**, who stated that the Applicants/Advocates provided legal services to the Respondent/Client. That their costs were taxed at Kshs. 1,651,319.76 on 29th October 2024, with a Certificate of Taxation issued on 20th November 2024. The Respondent has not contested or set aside the certificate and has failed to pay the taxed costs despite being duly served. That under Section 51(2) of the Advocates Act, the certificate can be enforced as a Court decree where there is no dispute on retainer. The Applicant also claims interest at 14% per annum from the date of filing.

3. The Application is uncontested as the Respondent neither appeared nor responded to the Application.

### **Issues for determination**

4. Upon considering the Application, the supporting affidavit and the pleadings herein the following issues commend themselves for determination:

- a) Whether the application is merited for the Court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs.1, 651, 319.76*
- b) Whether the Applicant should be awarded interests on the taxed costs*

### **Analysis**

5. The Advocate-Client Bill of Costs dated 24<sup>th</sup> June 2024 was taxed in the sum of Kshs.1, 651, 319.76 by the Taxing Officer. The Certificate of Taxation was issued in the sum of Kshs.1, 651, 319.76 on 20<sup>th</sup> November 2024. The Court has seen a copy of the certificate attached to the application.

a) **Whether the application is merited for the Court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs.1, 651, 319.76**

6. **Section 51(2) of the Advocates Act** provides as follows;

***“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.”***

7. There being no opposition, and having perused the Certificate of Costs attached dated 20<sup>th</sup> November, 2024, the Court is satisfied that the order sought is merited.

b) **Whether the Applicant should be awarded interests on the taxed costs**

8. As regards the issue of interest, the Applicant has claimed for interest on the taxed amount at the rate of 14% per annum. Rule 7 of the Advocates Remuneration Order provides as follows: -

***“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.”***

9. The Court has perused the email conversations from the Advocate to the Client as filed by the Applicant and it is notable that the Applicant did not make a claim that the interest would accrue at 14% p.a as envisaged in Rule 7 above.
10. As this Court stated in **Lubulellah & Associates Advocates versus N K Brothers Limited [2014] eKLR**, 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.
11. The same position was reiterated in **Kerongo & Company Advocates v Africa Merchant Assurance Company Limited (Amaco) [2018] KEHC 8664 (KLR)** where the Court held that;

***“An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the Advocates Remuneration order. As the Advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum. This court determined that the Advocates herein would be entitled to interest at court rates.”***

12. The import of the above is that the claim for interest at 14% p.a from 12<sup>th</sup> July, 2024 being the date of service of the Bill of Costs, fails. The Court has the discretion under Section 26 of the Civil Procedure Act to award interest.

## **26. Interests**

***(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of***

***the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.***

13. In exercise of such discretion the Court awards interest on the taxed amount at Court rates from the date of filing of this Notice of Motion, until payment in full.
14. The Applicant has satisfied the conditions of Section 51(2) of the Advocates Act. Thus, Certificate of Taxation dated 20<sup>th</sup> November 2024 is entered as judgment against the Respondent.
15. As to Costs, the same are awarded to the Applicant.

**Determination**

16. The Applicants/Advocates Application by way of a Notice of Motion dated 10<sup>th</sup> December, 2024 is allowed as follows;

a) *THAT the Certificate of Taxation dated 20th November 2024 for a sum of Kshs.1, 651, 319.76 be and is HEREBY adopted as a decree of this Honourable Court.*

b) *THAT Judgment be and is HEREBY entered in favour of the Applicants/Advocates against the Respondent/Client for the taxed sum of Kshs.1, 651, 319.76 together with interest at Court rates from the date of filing the Notice of Motion herein until payment in full.*

c) *THAT the costs of this Application be borne by the Respondent/Client.*

17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS  
04<sup>TH</sup> DAY OF DECEMBER, 2025.**

**NJOROGE BENJAMIN K.**

**JUDGE.**

In the presence of;

Miss Farida holding brief for Ndirangu for the Applicant/Advocates.

N/A for the Respondent/Client.

Mr. Peter Wabwire - Court Assistant.