

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS CIVIL APPLICATION NO.E035 OF 2024
MUTURI S.K & CO ADV
OVOCATES.....APPLICANT/ADVOCATES

VERSUS

YES HOUSING CO-OPERATIVE SOCIETY
LIMITED....RESPONDENT/CLIENT

RULING

1. This Ruling is in respect to the Advocates/Applicant application by way of a Notice of Motion dated 12th May, 2025. The Applicant filed the Notice of Motion dated 12th March 2025 seeking the following orders;

- a) *The Court does enter judgment in favor (sic) of the Applicant as against the Respondents jointly and severally for the sum of Kshs.260,673/- as appears on the Certificate of Taxation dated 12th November 2024 with interest from the date of service of the Certificate of Taxation until payment in full.*
- b) *The Applicant be allowed to execute the judgment against the Respondents.*

c) The costs of this Application be borne by the Respondents.

Background Facts

2. The Application was supported by the Affidavit of **Sammy Kariuki Muturi**, who averred that the Taxing Officer assessed the Applicant's Advocate-Client Bill of costs dated 15th November 2022 at Kshs.260,673. This is as shown in the Certificate of Taxation dated 12th November 2024.
3. The Respondent was served with the Certificate of Costs on 16th January 2024, but the amount remains unpaid to date. No appeal or application has been made to set aside the taxation.
4. In response, the Respondent filed the Replying Affidavit, sworn on 29th July 2025 and stated that The Respondent acknowledges that a Certificate of Taxation dated 12th November 2024 was issued in favour of the Applicant for Kshs.260,673, and does not dispute the amount.

5. However, due to financial constraints, the Respondent is unable to pay the sum in a single lump payment. The Respondent owns Plot No. 12 Mavoko Town Block 3/105550, valued at approximately Kshs.950,000, and proposes that the taxed amount be treated as a deposit toward the purchase price of this parcel of land.
6. The Applicant would then be required to pay the balance of Kshs.689,327 upon transfer of ownership. The Respondent asserts that this proposal is fair, reasonable, and made in good faith, aimed at achieving an amicable and expeditious settlement without prolonged execution proceedings.

Issues for determination

7. Having considered the Application, the Replying Affidavit and the submissions; the Court frames the following issues for determination:
 - a) *Whether the Court ought to enter judgment in the sum in the Certificate of Costs dated 12th November 2024 for the sum of Kshs.260,673/-.*
 - b) *Whether the Applicant is entitled to interest.*

Analysis

8. The Court having considered the application and the response filed notes that the proposal by the Respondent to pay by instalment cannot be used as a shield to bar the Court from entering judgement on costs. In any event, the Respondent has not filed a formal application seeking that this Court considers its proposal to liquidate the costs by way of instalments.

a) Whether the Court ought to enter judgment in the sum in the Certificate of Costs dated 12th November 2024 for the sum of Kshs.260,673/-.

9. The Applicant submitted that the Certificate of Taxation remains final, unchallenged and unopposed. The Respondent has neither filed any reference under Rule 11 of the Advocates (Remuneration) Order nor challenged the retainer. The same has therefore attained the character of finality contemplated under Section 51(2) of the Advocate's Act which provides:

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 **Lubulellah & Associates Advocates Vs N. K.**

Brothers Limited (2014) eKLR 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 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. 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 herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”

11. In the instant case, no reference has been filed challenging the certificate of taxation which is sought to be adopted as judgment on costs and no issue has been raised as to the retainer. This Court is therefore satisfied that the

Certificate of Taxation dated 11th October 2024 is uncontested.

12. It is noteworthy that the Respondent conceded that the Certificate of Taxation dated 12th November 2024 was issued in favour of the Applicant in the sum of Kshs.260,673/=. However, the Respondent stated that it owns Plot No. 12 Mavoko Town Block 3/105550, valued at about KShs. 950,000. In an effort to reach an amicable settlement, the Respondent proposed that the taxed amount of Kshs. 260,673 be treated as a deposit toward the purchase price of the land, with the Applicant paying the remaining Kshs. 689,327 upon completion of the property transfer. This amounts to an admission of the Respondent's indebtedness on the issue of costs.

13. Going by the above-mentioned provision of Section 51(2) of the Advocate's Act the court enters judgment in the sum in the Certificate of Costs dated 12th November 2024 for the sum of Kshs.260,673/-.

b) Whether the Applicant is entitled to interest.

14. On the issue of interest, it was the Applicant's submission that the Certificate of Taxation was served on the Respondent on 16th January 2024. Consequently, interest ought to accrue from 16th February 2024, upon which the lapse of one month since service was delivered to them.

15. Rule 7 of the Advocates Remuneration Order, states:

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.

16. The Court in **Jackson Omwenga & Co. Advocates vs. Everest Enterprises Ltd [2017]** stated;

"I have perused the Advocates Remuneration (Amendment) Order, Rule 7. Under the said rule, an advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full. To comply with that provision, the applicant must prove two things:

(a) That one month has expired from the time he delivered his bill to the client;

(b) He has raised his ‘claim’ for interest before the amount of the bill has been paid or tendered in full.”

17. Similarly, in **Prof Tom Ojienda & Associates v County Government of Nairobi (Judicial Review Miscellaneous Application E027 of 2020) [2025]**, the Court observed thus:

“Under the cited Rule 7 of the Advocates Remuneration Order, to lawfully claim the 14% interest, or any part thereof, on the taxed bill of costs, the advocate must:

- a. Serve the itemized bill of costs to the client,**
- b. Explicitly include a demand for interest at 14% in the bill, and**
- c. Wait for 30 days to lapse after service before interest begins to accrue.**

If the advocate fails to include the interest demand in the bill, then:

- a. The Taxing Officer lacks jurisdiction to award that interest during taxation; and**

b. The Court cannot include interest in the certificate of taxation or any resulting judgment adopting the certificate of costs.”

18. From a perusal of the record, there is no evidence that the Applicant ever served the Respondent with any document making a claim for interest. Therefore, in line with Rule 7, the Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent. The Court declines to award interest at the rate of 14% p.a.

19. In exercise of the Court’s discretion in awarding interest under Section 26 of the Civil Procedure Act, the Court awards interest at Court rates from the date of filing this application until payment in full.

20. The Court also notes that the Advocates represented a single client and hence the Judgement will be against a single client and not jointly and or severally as sought in the application.

Determination

21. The Advocate/Applicant's application by way of a Notice of Motion dated 12th March, 2025 is allowed in the following terms;

a) The Court does HEREBY enter judgment in favour of the Applicant as against the Respondent for the sum of Kshs.260,673/- as appears on the Certificate of Taxation dated 12th November 2024 with interest at Court rates from the date of filing of the Notice of Motion dated 12th March, 2025 until payment in full.

b) The Applicant be allowed to execute the judgment against the Respondent.

c) The costs of this Application be borne by the Respondent.

22. It is so ordered.

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

NJOROGE BENJAMIN K.

JUDGE.

In the presence of;

Miss Maina for the Applicant/Advocate.

Miss Jarso holding brief for Mr. Mogaka for the Respondent.

Mr. Peter Wabwire - Court Assistant.