

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION
MISC. APPLICATION NO. E231 OF 2023

GITONGA MUREITHI & COMPANY ADVOCATES
APPLICANT/ADVOCATE

VERSUS

GEORGE MUTURI KIGATHI
RESPONDENT/CLIENT

RULING

Introduction

1. The Advocate/Applicant moved this Court by a Notice of Motion dated **26th May 2025**, seeking the following substantive orders:
 - i. Judgment be entered in the sum of **Kshs. 1,000,000** pursuant to the consent dated 12th September 2023 and adopted as an order of the Court.
 - ii. Interest at 14% per annum from the date of judgment until payment in full.
 - iii. Costs of the application.
2. The application is premised on the uncontested fact that the parties recorded a consent on **12th September 2023**, compromising the Advocate-Client Bill of Costs at **Kshs. 1,000,000**, which consent was adopted as an order of the Court.

3. The Respondent has not filed any response, reference, or application seeking to vary or set aside the consent.

Analysis and Determination

4. Having considered the pleadings, the submissions filed herein, and the applicable law, the Court finds that the sole issue for determination is whether the application is merited.
5. It is common ground that the parties recorded a **consent dated 12th September 2023**, compromising the Advocate-Client Bill of Costs at **Kshs. 1,000,000**, which consent was duly adopted as an order of the Court on the same date.
6. Section 51(2) of the Advocates Act empowers the Court, where the retainer is not disputed and the amount due is ascertained, to enter judgment for the sum certified or agreed. A consent order adopted by the Court has the same legal force as a certificate of taxation and binds the parties unless set aside on grounds recognized in law.
7. The law is clear that a consent order has the force of a final judgment between the parties unless set aside on the traditional grounds of **fraud, mistake, misrepresentation, or any other ground that would vitiate a contract**.
8. In **Brooke Bond Liebig (T) Ltd v Mallya (1975) EA 266**, the Court held that a consent order is binding upon the parties and can only be interfered with on specific grounds.
9. No such grounds have been alleged, and no attempt has been made to set aside the consent of 12th September 2023. It

therefore remains binding. The Applicant is entitled to seek entry of judgment in the agreed sum.

10. In the absence of any dispute as to retainer, quantum, or the validity of the consent, the Court's role is purely administrative: to enter judgment in accordance with the consent already on record. The Advocate/Applicant is therefore entitled to judgment in the sum of **Kshs. 1,000,000**.
11. As to whether interest at 14% per annum is payable, the Court notes that the Applicant claims interest under **Rule 7 of the Advocates Remuneration Order**, which permits an advocate to charge **14% per annum** on costs and disbursements, provided the claim is raised before payment is tendered in full.
12. The Applicant expressly sought interest in the Application and in the written submissions. There is no evidence that the bill was settled or tendered in full. Courts have held, including in [E. W. NJERU & CO V ZAKHEM CONSTRUCTION \(K\) LIMITED \[2013\] KEHC 3376 \(KLR\)](#), that failure to expressly claim interest results in forfeiture. Here, the Applicant has expressly claimed the same.
13. The Court therefore finds it proper to award, as prayed, interest at 14% per annum on the judgment sum from the date of judgment until payment in full.
14. On costs, **Section 27(1)** of the Civil Procedure Act provides that costs follow the event unless the Court orders otherwise for good reason. The Respondent's failure to settle the

taxed costs and its failure to oppose the Application necessitated these proceedings. No reason exists to deprive the successful Applicant of costs.

15. The Applicant is therefore entitled to the costs of this Application.

Disposition

16. In the result, the Court finds the Notice of Motion dated **26th May 2025** meritorious and makes the following orders:

- i. Judgment is hereby entered in favour of the Advocate/Applicant against the Respondent in the sum of **Kshs. 1,000,000**, pursuant to the consent dated **12th September 2023** and adopted as an order of the Court.
- ii. The judgment sum shall attract **interest at 14% per annum** from the date of this judgment until payment in full.
- iii. Costs of the Application are awarded to the Advocate/Applicant.

17. It is so ordered.

SIGNED, DATED, and DELIVERED IN VIRTUAL COURT THIS

19TH FEBRUARY 2026

**ADO MOSES
JUDGE**

In the presence of: -

C/A - Moses

Ms. Gitari.....for the Advocate/Applicant

N/A.....for the Respondent

ORIGINAL FILE