

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
MISC. CIVIL APPLICATION NO. 117 OF 2019

MURIU MUNGAI & CO ADVOCATESADVOCATES/APPLICANT

VERSUS

DANIEL MWANGI MBUGUACLIENT/RESPONDENT

RULING

1. Before this Court is Notice of Motion dated 23 December 2019, seeking the enforcement of unpaid legal fees arising from the Applicant's representation of the Respondent in High Court Succession Cause No. 1835 of 2011.
2. The Application is substantively grounded upon the provisions of section 51(2) of the Advocates Act, section 26 of the Civil Procedure Act, Rule 7 of the Advocates (Remuneration) Order, and Order 51 Rule 1 of the Civil Procedure Rules.
3. The Applicant seeks the following specific orders from this Court:
 - a) THAT Judgment be entered for the Applicant against the Respondent in the sum of Kshs. 2,570,713.35/=.

- b) THAT the Applicant be awarded interest at the rate of 14% per annum on the said sum of Kshs. 2,570,713.35/= from 14th November 2019 until payment in full.
 - c) THAT the Applicant be awarded interest at the rate of 12% per annum of the said Kshs. 2,570,713.35/= from the date of the judgment of this Court to the payment in full.
 - d) THAT the costs of this application be borne by the Respondent in any event.
4. The Respondent has vehemently opposed the Application through a Replying Affidavit sworn on 2 October 2025 and corresponding submissions dated 3 October 2025. The Respondent raises profound allegations of professional misconduct, fraud, and the fabrication of evidence during the taxation process, while simultaneously asserting that a partial payment of the taxed costs was executed under duress. Furthermore, the Respondent challenges the jurisdiction of this Court to entertain the Application, invoking the Limitation of Actions Act and disputing the validity of the retainer.

Brief Background

5. Between January and March 2019, the Respondent engaged the Applicant to intervene in High Court Succession Cause No. 1835 of 2011 after discovering eviction orders levied against his daughter by the estate's Administrators. On 8 February 2019, the Respondent made an initial payment of Kshs 12,500/- to the Applicant for the retrieval and perusal of court files. On 11 March 2019, the Applicant filed Notice of Appointment of Advocates to act for the Respondent in the succession proceedings.
6. On 17 June 2019, the Respondent officially terminated the Applicant's services via a written letter, citing disregarded instructions, an attempt to force an unfavourable consent agreement and inadequate representation. The Respondent then appointed a new law firm, C.B Mwangela & Co.

Advocates, on the same day, to assume conduct of the cause. On 26 June 2019, the Applicant filed an Advocate-Client Bill of Costs seeking a total of Kshs 37,331,147.75 for professional services rendered. On 21 August 2019, the new firm filed an Objection to the Applicant's Bill of Costs on behalf of the Respondent, challenging the quantum and necessity of the billed terms.

7. On 14 November 2019, the Taxing Master assessed the Bill of Costs, striking off Kshs 34,760,434.40 and allowing costs in the sum of Kshs 2,570,713.35. A Certificate of Taxation was subsequently issued, precipitating the current Application. On 22 May 2020, the Respondent authorised a payment of Kshs 1,285,356.68 to the Applicant from the proceeds of a land sale in Mtwapa, representing exactly 50% settlement of the taxed costs.
8. The Application was canvassed by way of written submissions.

The Applicant's Submissions

9. The foundation of the Applicant's legal argument is anchored on section 51(2) of the Advocates Act. The Applicant contends that because the Respondent failed to file an objection or Reference against the Taxing Master's decision of 14 November 2019, the Certificate of Taxation issued on 19 November 2019 is final, conclusive, and unimpeachable as to the amount payable.
10. To buttress this position, the Applicant relies on the binding precedent of ***Gachiri Kariuki t/a Gachiri Kariuki & Co Advocates v Invesco Assurance Co Limited eKLR***, where the Court held that section 51(2) vests the Court with the jurisdiction to enter judgment provided the Bill of Costs has been taxed and a Certificate of Costs issued. The Court emphasized that where a certificate has not been appealed against, set aside, or varied, it remains

conclusive evidence of the debt, and the Court may exercise its discretion to enter judgment for the applicant.

11. Regarding the claim for interest, the Applicant relies on Rule 7 of the Advocates (Remuneration) Order, arguing an absolute statutory entitlement to a 14% per annum interest rate on the taxed costs from 14 November 2019, the date of taxation, until payment is made in full. In support of this prayer, the Applicant cites ***Nyaundi Tuiyott & Co Advocates v African Marchant Assurance Co Limited eKLR***, where the Court affirmed that an Advocate may charge interest at 14% per annum starting 30 days after the delivery of the bill to the client, provided the retainer is undisputed.
12. Furthermore, the Applicant invokes section 26 of the Civil Procedure Act, urging the Court to exercise its inherent discretion to award an additional 12% interest on the aggregate sum from the date of the judgment until payment in full. The Applicant posits that the Application is merited as all statutory prerequisites for the entry of judgment on a taxed bill of costs have been unequivocally satisfied.

The Respondent's Submissions

13. The Respondent vigorously opposes the entry of judgment, advancing severe allegations of professional misconduct, fraud, extortion, and procedural impropriety.
14. The Respondent contends that the Taxation Bill filed by the Applicant was fatally flawed, bad in law, and based entirely on fabricated evidence. The Respondent alleges that the Applicant billed millions of shillings for works never undertaken, asserting that the firm merely filed a single Notice of Appointment and held brief for a few mentions before their services were terminated. The Respondent claims that the Applicant was so confident in their deceit that they undertook to fill a taxation bill in pencil and never

provided copies of the work product to justify the fees. Furthermore, the Respondent alleges an elaborate scheme of collusion between the Applicant and the Respondent's subsequent advocate, C.B. Mwongela, to inflate the taxation bill, mislead the Court, and defraud the Respondent.

15. The Respondent argues that the legal fees are unjustified because the Applicant failed to provide competent representation. According to the Respondent, the Applicant refused to follow explicit client instructions to investigate past financial embezzlement by the estate's Administrators. Instead, the Applicant allegedly coerced the Respondent to accept a highly prejudicial consent regarding the distribution of the Deceased's estate, without conducting proper valuations or searches to ensure equitable distribution. The Respondent claims the Applicant ignored the critical fact that the Respondent resided on one of the properties earmarked for subdivision, placing him at risk of eviction.
16. In a crucial admission, the Respondent concedes that a partial payment has already been made toward the taxed costs. The Respondent deposes that on 22 May 2020, under duress and alleged blackmail by his second Advocate, C.B. Mwongela, who refused to release estate funds from a joint escrow account, a sum of Kshs. 1,285,365.68/= was disbursed to the Applicant. The Respondent argues that this payment, representing 50% of the taxed costs, constitutes a gross overpayment for the limited services rendered.
17. The Respondent argues that the Applicant's suit must fail as it is time-barred under the Limitation of Actions Act. The Respondent relies on section 4(5) of the Act, asserting that an action to recover any penalty or forfeiture may not be brought after the end of 2 years. Because the Applicant is ostensibly pursuing sums accruing from 2019 via an application prosecuted in 2022, the Respondent claims the action is fatally time-barred. Additionally, the

Respondent implies that because the contract of representation was breached through professional misconduct, the retainer itself is disputed, barring the Applicant from relying on the summary procedure of section 51(2) of the Advocates Act.

Analysis & Determination

18. Having carefully considered the pleadings, the affidavits on record, the rival submissions, this Court formulates the following definitive issues for determination:

- a) Whether the Applicant's claim for judgment is time-barred under the Limitation of Actions Act;
- b) Whether the retainer is disputed within the meaning of section 51(2) of the Advocates Act, thereby stripping the Court of jurisdiction to enter summary judgment;
- c) Whether the Respondent's allegations of fraud, fabrication of evidence, and professional misconduct provide a sufficient legal basis for this Court to go behind or set aside the Certificate of Taxation at the judgment entry stage;
- d) What is the legal effect of the partial payment of Kshs. 1,285,356.68/= made by the Respondent on 22 May 2020 on the quantum of the decree?
- e) Whether the Applicant is entitled to the claimed interest at 14% per annum under the Advocates (Remuneration) Order and a concurrent 12% per annum under the Civil Procedure Act.

Whether the Applicant's claim is time-barred

19. The Respondent has raised a preliminary point of law, arguing that the Applicant's suit is time-barred under section 4(5) of the Limitation of Actions Act. The Respondent posits that an action to recover a penalty or forfeiture must be brought within 2 years from the date the cause of action accrued,

and since the Applicant is pursuing 2019 costs through submissions filed in 2022, the claim is extinguished by the statute of limitations.

20. This argument demonstrates a fundamental misapprehension of both procedural history and statutory limitation frameworks as they apply to the recovery of Advocate's fees.
21. Firstly, the recovery of Advocate's fees is an action founded on contract and the provision of professional services. Under section 4(1) of the Limitation of Actions Act, actions founded on contract carry a limitation period of 6 years. The Respondent's reliance on section 4(5) of the Act is entirely misplaced. Section 4(5) prescribes a two-year limitation strictly for actions to recover a penalty or forfeiture recoverable by virtue of a written law. A Certificate of Taxation representing assessed legal fees is neither a statutory penalty nor a forfeiture; it is a judicially quantified contractual debt.
22. Secondly, the jurisprudence on when the limitation period begins to run in Advocate-Client fee disputes is well-settled. Time does not begin to run from the date the Advocate was hired, nor from the date the services were terminated. As established in the case of ***M S Shariff & Co Advocates v Omari Mbwana Zonga [2020] eKLR***, the limitation period for claims arising from taxed costs begins to run after the taxation of the Bill of Costs, because the exact quantum of the cause of action crystallizes only upon the issuance of the Certificate of Taxation.
23. Thirdly, the Respondent's chronological assertion regarding the filing of the Application is factually incorrect based on the Court record. The Certificate of Taxation was issued on 19 November 2019. The Applicant filed the present Notice of Motion seeking judgment on 23 December 2019. The action was, therefore, instituted a mere 5 weeks after the cause of action accrued. This is well within the 6-year limitation period. The fact that the parties continued to

file written submissions in 2022 and 2025 does not alter the date the suit was instituted.

24. Accordingly, I find that the Applicant's claim is securely within the statutory limitation period, and the Respondent's preliminary objection on this ground is dismissed as entirely devoid of legal merit.

Whether the retainer is disputed

25. The power of the Court to enter summary judgment based on a Certificate of Taxation is governed by Section 51(2) of the Advocates Act, which provides:

(2) 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.

26. This statutory provision is designed to afford Advocates an expeditious mechanism to recover taxed costs without the necessity of filing a protracted civil suit under section 48 of the Act. However, the jurisdiction to enter judgment under section 51(2) is subject to one critical caveat: it applies only in a case where the retainer is not disputed.

27. If the retainer is genuinely disputed, the Advocate is ousted from the summary procedure of section 51(2) and must instead file a standard civil suit for the recovery of fees under section 48 of the Advocates Act to allow the Court to receive evidence and determine the existence of the contract. This principle was thoroughly examined in ***M S Shariff & Co Advocates v Omari Mbwana Zonga eKLR***, where the Court dismissed an application for

judgment under section 51(2) because the client outrightly denied instructing the Advocate or being the individual named in the suit, thus rendering the retainer disputed. Similarly, in ***A Thuo Kanai Advocates v Cannon Assurance Limited [2025] KEHC 2786***, the Court held that a taxing master lacks the jurisdiction to resolve retainer disputes, and if the client disputes the existence of the Advocate-Client relationship, judgment under section 51(2) must be refused pending a full trial.

28. The pivotal question, therefore, is what constitutes a disputed retainer in law, and whether the Respondent in the present case has successfully disputed the retainer.
29. A retainer is the contract of employment between an Advocate and a client. Disputing the existence of the retainer means the client claims they never hired the Advocate, that the Advocate acted without instructions, or that there is no privity of contract. However, disputing the quantum of fees, questioning the quality of the work done, or alleging that the Advocate breached their fiduciary duties during the subsistence of the retainer, does not amount to a disputed retainer under the meaning of section 51(2).
30. In the present matter, the Respondent explicitly admits to engaging the Applicant. In his Replying Affidavit, the Respondent states: *"THAT it is not true that MMC were on record from 2011, they were on record from 2019 for less than 90 days, were I then terminated their services..."*.
31. Furthermore, the Respondent admits to paying an initial deposit of Kshs. 12,500/= to the Applicant on 8 February 2019 for the retrieval of files, and relies on an email correspondence trail where he issued instructions to the Applicant.

32. These categorical admissions are fatal to any argument that the retainer is disputed. The Respondent acknowledges that a contract of legal representation existed, that instructions were given, that partial payment was made, and that the relationship was subsequently formally terminated. Where the fact of instruction is admitted, the retainer is firmly established. An Advocate is entitled to judgment under section 51(2) provided the fact of the retainer is not disputed; a mere dispute over the amount of work done or the value of the services rendered does not negate the existence of the retainer itself.
33. Consequently, I find that the retainer between the Applicant and the Respondent is not disputed in law. The Applicant is, therefore, perfectly within its rights to invoke the summary jurisdiction of section 51(2) of the Advocates Act to seek the entry of judgment.

Whether the Respondent can challenge the Certificate of Taxation on grounds of fraud and professional misconduct at the judgment entry stage

34. The Respondent mounts a vigorous collateral attack on the Certificate of Taxation, arguing that it should not be enforced because the underlying Bill of Costs was fatally flawed, bad in law, and predicated on fabricated evidence and fraud. The Respondent alleges that the Applicant billed for millions of shillings for works never undertaken, colluded with subsequent Counsel, and engaged in severe professional misconduct by advising the Respondent against his interests.
35. The Court must determine whether it possesses the jurisdiction to entertain these allegations of fraud and misconduct as a defence to an application for judgment under section 51(2).
36. The jurisprudence of the High Court, the Court of Appeal, and the Supreme Court is unequivocal on the sanctity and finality of a Certificate of Taxation.

Section 51(2) of the Advocates Act explicitly states that the certificate of the taxing officer shall be final as to the amount of the costs covered thereby, unless it is set aside or altered by the Court.

37. In ***Lubulellah & Associates Advocates vs N K Brothers Limited [2014] eKLR***, the Court established that once a Taxing Master has taxed costs and issued a certificate, and no Reference is filed against the ruling, the Certificate becomes final and binding. No further action is required from the court save to enter judgment.
38. The procedure for challenging a Taxing Officer's decision is strictly codified under Rule 11 of the Advocates (Remuneration) Order. A party aggrieved by a taxation decision must file a formal Reference to the High Court within 14 days of the taxation Ruling. The Supreme Court, in ***Outa v. Odoyo & 3 Others, SC Petition No. 6 of 2014; KESC 75 (KLR)***, outlined the strict parameters under which a Certificate of Taxation may be interfered with upon a Reference, noting that a single Judge can only interfere if there is an error of principle, if the fee is manifestly excessive, or if justice demands reimbursement adjustments.
39. The record before this Court indicates that the Respondent, through his then-Advocate C.B. Mwongela, actively participated in the taxation proceedings and filed an Objection to the Bill of Costs. The Taxing Master considered these objections, engaged in a judicial assessment of the file, and subsequently taxed the bill down significantly from the claimed Kshs. 37,331,147.75/= to Kshs. 2,570,713.35/=.
40. If the Respondent believed that the Taxing Master relied on fabricated folios, or that the assessment was tainted by fraud, the mandatory statutory remedy was to file a Reference to the High Court within 14 days of the 14 November 2019 Ruling. The Respondent failed to file any such Reference.

41. A party cannot sleep on their rights during the taxation and reference windows, only to ambush the execution and judgment entry stage with allegations of fraud. While it is a cardinal principle of law that fraud unravels everything, the procedural stage and the standard of proof are critical. As held by the Court of Appeal in ***Central Kenya Ltd v. Trust Bank Ltd & 4 Others, Civil Appeal No. 215 of 1996 eKLR***, fraud must be specifically pleaded and strictly proved; vague and general allegations of fraud in affidavit evidence cannot suffice to overturn a statutory certificate or a regular judgment.
42. Furthermore, the Court in ***Njagi Wanjeru & Company Advocates v Nairobi City County [2015] eKLR***, reinforced that while certificates can theoretically be set aside for fraud, the burden of proof is exceptionally high, and bare assertions of collusion do not suffice. The Respondent's claims that the Applicant did nothing but file a Notice of Appointment are directly contradicted by the Taxing Master's Ruling, which evaluated the file and awarded over Ksh 2 million based on an objective assessment of the work on record.
43. If the Respondent genuinely suffered actionable professional negligence, or if his Advocates engaged in disgraceful conduct incompatible with the status of an Advocate, as defined under section 60 of the Advocates Act, the appropriate forums are the Advocates Disciplinary Tribunal or a separate civil suit for professional negligence and breach of fiduciary duty. An application under section 51(2) for the entry of judgment is a summary procedure. It cannot be converted into a full-blown trial regarding professional misconduct or an appellate review of the Taxing Master's factual findings.
44. Therefore, I find that in the absence of a formal Reference setting aside or altering the Certificate of Taxation, this Court cannot go behind the Certificate

at the section 51(2) judgment entry stage based on collateral allegations of fraud raised in a Replying Affidavit. The Certificate of Taxation dated 19 November 2019 remains valid, final, and conclusive as to the amount of costs.

The Legal Effect of the Partial Payment

45. A unique and critical evidentiary element in this case is the Respondent's unrefuted evidence of a partial payment toward the taxed costs.

46. In paragraph 10 of the Replying Affidavit, the Respondent deposes under oath:

"THAT I concede I grossly over paid the law firm of MMC on the 22nd May 2020 1,285,365/= for alleged works they insinuated to have carried out..."

47. This payment is heavily corroborated by documentary evidence. The Respondent annexed a letter dated 22 May 2020, signed by himself, instructing his new Advocates, C.B. Mwongela & Co., to disburse funds realized from the sale of land in Mtwapa. Specifically, the letter authorizes the payment of Kshs. 1,285,356.68/= to Muriu, Mungai & Co. Advocates, explicitly noting this amount as *"representing 50% of their taxed costs in NAIROBI MISCELLANEOUS CAUSE NO. 117 OF 2019"*.

48. The Applicant's Notice of Motion, dated 23 December 2019, naturally does not reflect this payment, as the payment occurred five months after the application was filed. However, it is highly concerning that in the Applicant's Skeleton Submissions filed on 1 November 2022—more than 2 years after the partial payment was allegedly received—the Applicant continues to pray for judgment for the full sum of Kshs. 2,570,713.35/= without acknowledging the receipt of the Kshs. 1,285,356.68/=.

49. While section 51(2) makes the Certificate of Taxation final as to the amount of costs covered thereby, it also grants the Court broad equitable discretion in enforcement, stating that the Court may make such order in relation thereto as it thinks fit.
50. Entering a decree for the full original sum of Kshs. 2,570,713.35/= when exactly 50% of that debt has already been extinguished would facilitate unjust enrichment, result in double recovery for the Applicant, and amount to a gross abuse of the court process.
51. The Respondent's allegations that this payment was procured through blackmail by his second Advocate do not negate the legal fact that the Applicant's financial claim against the Respondent has been partially satisfied. If the Respondent believes he was extorted by his Advocates to release escrow funds, his remedy lies in lodging a formal complaint with the Advocates Complaints Commission or filing a separate civil suit for restitution of monies paid under duress. It does not empower this Court to ignore the mathematical reality of the payment.
52. Accordingly, I determine that while the Applicant is entitled to judgment based on the Certificate of Taxation, the decree must be strictly abated by the exact quantum of the payment made. The principal sum due is, therefore, the certified amount (Kshs. 2,570,713.35) less the acknowledged paid amount (Kshs. 1,285,356.68), leaving an outstanding principal balance of Kshs. 1,285,356.67.

Interest

53. The Applicant prays for interest on the taxed costs at the rate of 14% per annum from 14 November 2019 until payment in full, and a further, concurrent interest at the rate of 12% per annum from the date of the judgment of this Court.

54. The statutory basis for interest on an advocate's unpaid fees is found in Rule 7 of the Advocates (Remuneration) Order, which 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.

55. The jurisprudence surrounding Rule 7 is well-settled and consistently applied by this Court. In ***Nyaundi Tuiyott & Co Advocates v African Marchant Assurance Co Limited [2018] eKLR***, the Court held that an Advocate is strictly entitled to 14% interest commencing 30 days after the date of service of the Bill of Costs. Similarly, in ***Onyoni Opini & Co Advocates vs Invesco Assurance Co Ltd [2024] eKLR***, the Court enforced the 14% interest rate under the Remuneration Order on a final certificate.
56. However, the application of Rule 7 is not entirely automatic. As elucidated in ***Munene Wambugu & Kiplagat Advocates v Nanak Hospital Management Services Limited***, if the element of interest is not explicitly pleaded or if the dates do not align with the statutory provision of one month from the delivery of the Bill, the Court must rely on its inherent discretion under section 26 of the Civil Procedure Act to award interest from the date of judgment.
57. In this case, the Applicant's Bill of Costs was dated 26 June 2019 and served on the Respondent prior to taxation. The Applicant seeks 14% interest from 14 November 2019. Under Rule 7 of the Remuneration Order, the Applicant is lawfully entitled to interest at 14% per annum, as the claim was raised before the Bill was paid in full, and the requested start date is well beyond the one-month expiration period from the delivery of the Bill.

58. However, because a substantial partial payment was made on 22 May 2020, the interest calculation must reflect the changing principal. The original sum of Kshs. 2,570,713.35 accrued interest at 14% from 14 November 2019 until 22 May 2020. Thereafter, the remaining balance of Kshs. 1,285,356.67 continues to accrue interest at 14% until payment in full.
59. Regarding the Applicant's supplementary prayer for an additional 12% interest from the date of judgment pursuant to section 26 of the Civil Procedure Act, I decline to grant this prayer. Awarding both the 14% statutory interest under the Advocates (Remuneration) Order and a concurrent 12% court rate under the Civil Procedure Act would amount to punitive double-dipping. The 14% rate provided by the Remuneration Order is a specific, comprehensive statutory rate designed to compensate Advocates for delayed payments, and it runs until payment in full. It supersedes the general court rates applied under the Civil Procedure Act.
60. For the foregoing reasons, the Notice of Motion dated 2 December 2019 is hereby allowed in part. The Court issues the following orders:
- (i) The Certificate of Taxation dated 19 November 2019 is hereby adopted as a Judgment of this Court.
 - (ii) Judgment is entered for the Applicant against the Respondent in the sum of Kshs. 1,285,356.67 (being the certified sum of Kshs. 2,570,713.35 less the acknowledged payment of Kshs. 1,285,356.68 made on 22 May 2020).
 - (iii) The Applicant is awarded interest on the outstanding principal sum of Kshs. 1,285,356.67 at the rate of 14% per annum, pursuant to Rule 7

of the Advocates (Remuneration) Order, from 2 May 2020 until payment in full.

- (iv) The Applicant's prayer for an additional, concurrent 12% interest is declined.
- (v) Considering the partial settlement executed during the pendency of the suit, and the fact that the Applicant failed to disclose this payment in its subsequent submissions, each party shall bear their own costs for this Application.

DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF MARCH 2026

HELENE R. NAMISI
JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For the Advocates/Applicant: Mr Opole h/b Mr. Kenneth Wilson

For the Client/Respondent: Wanjiru Mwangi proxy for the Defendant

Court Assistant: Lucy Mwangi