



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
MISC APPLN NO. E266 OF 2021

BETWEEN

MWANGI KENG'ARA & CO ADVOCATES
APPLICANT

VERSUS

INTERWAYS WORKS LIMITED1ST
RESPONDENT

JOEL K. KIBE2ND RESPONDENT

RULING

Introduction and Background

1. This Court is called upon to determine the Notice of Motion dated 28th July 2025, brought pursuant to **Section 51(2) of the Advocates Act** and **Rule 7 of the Advocates Remuneration Order (ARO)**. The Applicant seeks entry of judgment for taxed costs in the sum of Kshs. 620,140/=, together with interest at the rate of 14% per annum from 10th July

2021 until payment in full, as reflected in the Certificate of Taxation dated 16th July 2025.

2. The application is supported by the affidavit of **Mercy Nduta Mwangi**, sworn on 28th July 2025. The Applicant contends that despite rendering professional services to the Respondents, no remuneration has been forthcoming from the Respondent. It is further contended that the Bill of Costs dated 22nd January 2025 was duly taxed, a Certificate of Taxation issued, and demands for payment made, yet the Respondents have failed to honour their obligation. The Applicant therefore invokes the statutory entitlement under **Section 51(2) of the Advocates Act** so as to recover the said amounts.

3. The application is opposed through the Replying Affidavit of **Joel Kamau Kibe**, the 2nd Respondent. The Respondent concedes that the Advocate's Bill of Costs was taxed at Kshs. 620,140/= but asserts that the Applicant had initially filed a Bill of Costs dated 15th April 2021, which was subsequently abandoned in favour of an Amended Bill dated 22nd January 2025. It is argued that since the taxation was conducted on the amended Bill culminating in the

Certificate of Taxation issued on 16th July 2025, any claim for interest prior to that date is misconceived. The Respondent maintains that interest, if at all, can only accrue from the date of the ruling on taxation, not from 10th June 2021, being 30 days after service of the initial Bill of Costs.

Analysis and Determination

4. Upon a careful review of the written submissions filed by the parties, it is manifest that the sole issue in dispute concerns the aspect of interest, the principal sum of Kshs. 620,140/= being uncontested. The Applicant's claim for interest is premised on **Rule 7 of the ARO** which provides that:

“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.”

5. The jurisprudence on this provision is settled. In **Jackson Omwenga & Co. Advocates V Everest Enterprises Ltd, [2017]**, the Court held that under **Rule 7**, an advocate may only charge interest upon demonstrating two conditions: first, that the bill was duly delivered to the client and second, that the claim for interest was expressly raised before the bill was paid or tendered in full.
6. Similarly, in **Prof. Tom Ojienda & Associates V County Government of Nairobi (Judicial Review Misc. Application E027 of 2020) [2025]**, the Court emphasized that an advocate seeking to rely on **Rule 7** must explicitly include a demand for interest in the bill itself.
7. The requirement for an advocate to make a specific demand for interest is a deliberate safeguard embedded in **Rule 7**. As the Court observed in **Makhecha & Company Advocates V Central Bank of Kenya, [2020] KEHC 9769 (KLR)**, the purpose of such a demand is to place the client on clear notice that failure to settle the bill within the statutory period will attract an additional financial burden in the form of interest. The central issue, therefore, is whether the Applicant made a clear

demand for interest in the Bill of Costs or Certificate of Taxation.

8. Having examined both the Bill of Costs dated 15th April 2021 and the Amended Bill dated 22nd January 2025, together with the Certificate of Taxation, I find that none of these documents contained an express claim for interest. In the absence of a prior demand, the claim for interest cannot be sustained within the meaning of **Rule 7 of the ARO**.
9. Nonetheless, this Court cannot ignore the broader policy consideration that the Advocate has been kept out of its money since the filing of the Amended Bill of Costs. The Respondent was duly notified of the precise quantum claimed as of 22nd January 2025, yet no payment has been forthcoming. In such circumstances, the Court is enjoined to exercise its discretion under **Section 26 of the Civil Procedure Act**, which empowers it to award interest at such rate and from such date as it considers just.
10. The rationale for such discretion is to ensure fairness and to compensate a party who has been deprived of the use of its money. Interest, in this context, is

not punitive but compensatory, reflecting the time value of money withheld.

Disposition

- i. Accordingly, the application dated 28th July 2025 is allowed. Judgment is hereby entered in favour of the Advocate/Applicant for the amount of Kshs. 620,140/= as reflected in the Certificate of Taxation dated 16th July 2025.***
- ii. I also award interest at Court rates from the date of filing the Amended Bill of Costs dated 22nd January 2025, being the point at which the Respondent was formally notified of the amount due, until payment in full.***
- iii. The Respondent shall pay the costs of the application.***

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 23RD DAY OF MARCH 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Ms Mwangi for the advocate/ applicant
Mr Kinyua for the client/ respondent
Court Assistant: Lillian