

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL MISC. APPLN NO. E029 OF 2025

PROF. TOM OJIENDA & ASSOCIATES APPLICANT
- VERSUS -
B.N. KOTECHA & SONS LTD RESPONDENT

R U L I N G

1. By a Motion on Notice dated **11/08/2025**, the applicant applied for Judgment for **Kshs. 1,383,194/-** together with interest from **12/04/2025** against the respondent. The Motion was brought under the provisions of ***section 51(2) of the Advocates Act, Cap 16 Laws of Kenya*** and ***Rule 7 of the Advocates Remuneration Order***.
2. The basis for seeking judgment was that it was in terms of a Certificate of Costs dated **6/08/2025**.
3. In the Supporting affidavit sworn by **Prof. Tom Ojienda SC** on **11/08/2025**, it was contended that he represented the respondent in **Kisumu HCCC No. 38 of 2015: United Millers Ltd v B.N. Kotecha & Sons Limited** but the respondent failed to pay his legal fees. That he proceeded to raise his Bill of Costs dated **26/02/2025** and the same was taxed at **Kshs. 1,383,194/-** on the **26/02/2025**.

4. That the respondent has not settled the said Bill to date neither did he oppose the taxation nor file a reference to challenge the taxation. The Motion was not opposed.
5. I have considered the record. I have seen a copy of the Certificate of Taxation issued on the **6/08/2025**. It is for **Kshs. 1,383,194/-** only.
6. **Section 51(2) of the Advocates Act** 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.”

7. From the foregoing, it is clear that an Advocate is entitled to judgment on the amount certified after a taxation of an advocate-client bill of costs. That Certificate must not have been varied or set aside. In the present case, there is no evidence that the Certificate has been varied or set aside.
8. On the issue of interest, the Court of Appeal held in **Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd (Civil Appeal 165 of 2019) [2023] KECA 1443 (KLR) (24 November 2023) (Judgment)** that: -

“With respect, in the circumstances of this case, I think the learned Judge was obliged to utilize the awarded interest rate of

14% p.a. This is because in this case, the appellant put the client on notice about his claim for interest at 14% p.a. under Rule 7 of the Advocates Remuneration Order. The client, then, specifically litigated the interest in the taxation proceedings – and was awarded the interest by the Taxing Master. The appellant, therefore, made this claim to the client a priori so as to notify the client he would be demanding interest. The Certificate of Costs could, at the time it was issued, only reflect the interest as it stood on the date it was issued. However, having lawfully and procedurally awarded the appellant the interest at 14% p.a. by dint of Rule 7 of the Advocates Remuneration Order, it would be absurd to hold that the rate could be changed at the discretion of the High Court if the client failed to settle the amounts claimed necessitating the appellant to lodge section 51(2) enforcement proceedings. In the present case, the appellant claimed and was awarded interest at 14% p.a. during taxation and, therefore, had no need to invoke Rule 11 of the Advocates Remuneration Order to challenge it.”

9. The Court of Appeal further stated: -

“22. To reiterate, the rule of law announced in the companion case, Kisumu Civil Appeal No. 129 of 2018, to the effect that an advocate is not permitted to surcharge a client interest at the rate

of 14% p.a. under Rule 7 of the Advocates Remuneration Order unless he notified the client of that charge in his fee note/bill to the client and in his Bill of Costs as lodged in Court has no application in this case. This is because, here, the advocate included the interest in the Bill of Costs and benefitted from a favourable award by the Taxing Master. It was incumbent upon the respondent, if dissatisfied with the award, to challenge it by invoking Rule 11 of the Advocates Remuneration Order; and it did not do so.

...

If the advocate demands interest at that late stage, he will likely suffer two potential perils: the court can only award interest at earliest from the date of lodging the Bill of Costs; and the interest is at the discretion of the court. However, where the interest of 14% p.a. under Rule 7 of the Advocates Remuneration Order is specifically claimed in the Bill of Costs and awarded during the taxation proceedings, the interest will apply to the taxed amount until it is fully paid. An application under 51(2) of the Advocates Act will not act to reduce the interest rate or otherwise create a reservoir of discretion for the judge to change the interest rate.”

10. It would seem therefore that interest of 14% on costs is awardable if it is claimed in the bill of costs or 30 days after service of an itemized fee

note. Failing of that, the interest would be the normal court rate from the date of assessment of costs.

11. Accordingly, I allow the application as prayed. The costs of the application is assessed at **Kshs. 10,000/-** only.

It is so ordered.

DATED and **DELIVERED** at Kisumu this 25th day of **March, 2026**.

A. MABEYA, FCI Arb
JUDGE