

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI COMMERCIAL AND TAX DIVISION

MILIMANI LAW COURT

MISCELLANEOUS APPLICATION NO. E925 OF 2020

KAIRU & McCOURT ADVOCATES.....

APPLICANT

VERSUS

DIRECTLINE ASSURANCE COMPANY LIMITED.....

RESPONDENT

RULING

1. This Ruling is in respect of the Advocate/Applicant's application seeking for adoption of costs. The same is by way of Notice of Motion dated 18.3.2025.

Background Facts:

2. The Advocate seeks the following orders:

1. This Honourable Court do enter judgment in favour of the Applicant and as against the Respondent for the sum of Kenya Shillings Eleven Million, Six Hundred and

Fifty-Eight Thousand Only (Ksh.11,658,000.00) being the taxed and certified costs payable to the Applicant by the Respondent.

- 2) This Honourable Court do award interest on the aforesaid amount of Kenya Shillings Eleven Million, Six Hundred and Fifty-Eight Thousand Only (Ksh.11,658,000.00) at fourteen percent (14% p.a) from the date of filing the Bill of Costs.*
- 3) A Decree be issued pursuant to the Judgment and Order in 1 and 2 above.*
- 4) The costs of this Application be borne by the Respondent.*
3. The application was not opposed by the Client/Respondent.
4. The Court gave directions that the application be disposed of by way of written submissions. These submissions have been filed.
5. The facts of the case are fairly straight forward as presented.

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6. The Advocate/Applicant represented the Client/Respondent in the year 2020. This was in respect of the sale of Land Reference Number 1008/6 Nairobi for a consideration of Ksh.890,800,000,00. The Client/Respondent was the vendor.
7. Payment of fees for the transaction was not forthcoming.
8. The Advocate draw and filed an Advocate/Client Bill of Costs dated 10.3.2020. This Bill of Cost was taxed by the taxing officer at Ksh.11,658,000.00 on 11.2.2025. A Ruling to that effect was issued.
9. A Certificate of Costs was issued on 19.2.2025. Despite the Certificate of Costs being issued, the payment of costs has not been forth coming. This has led to the filling of this application to adopt the Certificate of Costs as a decree of the Court.

Issues of Determination

10. The Court has considered the application and the written submissions by the Advocate/Applicant. The Court frames a single issue for determination as follows;

a) Whether the Certificate of Costs issued by the taxing officer should be adopted as a decree of the Court.

Analysis

11. The power to adopt a Certificate of Costs as a decree of this Court is provided for by **Section 51(2) of the Advocates Act, Cap 165 of the Laws of Kenya**. The Section states as follows;

51. C

(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(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.

12. This being an application for enforcement of payment of an Advocate costs, taxed and certified, the Court follows the decision in **Kalonzo Musyoka & Paul M. Wambua (Practicing as Musyoka & Wambua Advocates) vs Rustam Hira (Practicing as Rustam Hira Advocates) [2006] KHEC 307, eKLR.**

“In my view, sub-section (1) of section 48 above does not state that an advocate’s costs must in all cases be recovered by way of plaint. Far from it. The section simply lays down a condition precedent for the filing suit for recovery of costs. That condition is delivery or sending by registered post to the client a duly signed bill of costs, which may be in summarized form, at least one month before filing action. Section 49 of the Act lays out the

procedure in an action where the quantum of costs is challenged by defence. It is to be noted that such procedure may include taxation before the suit is set down for hearing.

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provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has the discretion to enter judgment upon a certificate of taxation which has not been set aside or altered where there is no dispute as to retainer. This, in my view, is a mode of recovery of taxed costs provided by the law, in addition to the filing of suit, where such suit would be unnecessary because, one, the certificate of taxation has not been set aside or altered and, two, there is no dispute as to retainer. Unless there is any other matter as would require ventilation in a trial, what would be

the necessity of filing suit? In my view the court would be entitled to enter judgment under section 51(2) even where there is no suit filed. I so hold.”

13. Rule 7 of the Advocate Remuneration Order provides as follows;

7. Interest may be charged

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.

14. In **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR)**, the Court of Appeal was of the firm opinion that interest ought to be raised at the first instance prior to taxing the Bill of Costs.

The Court stated as follows;

“Rely

Njogu and Company Advocates vs Kenya National Capital Corporation (supra), the respondent’s response was that the period from when interest will accrue is a matter to be left to the discretion of the court

Rule

“An advocate may charge interest at 14% per annum on his disbursements and cost, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest it raised before the amount of the bill has been paid or tendered in full”.

As such, the rule deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a feenote. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the bill or feenote. The learned judge’s reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.”

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15. **Section 27 (2) of the Civil Procedure Act Cap 21** of the Laws of Kenya provides as follows;

27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

at any rate not exceeding fourteen per cent per

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annum, and such interest shall be added to the costs and shall be recoverable as such.

16. The Court notes that the Certificate of Costs issued on 19.2.2025 has neither been set aside nor reviewed. The Court is unaware of any Appeal/Reference pending on the issues of Advocate/Client's costs. The Court is thus inclined to allow the application.
17. As to interest, the same is sought from the date of filing the Bill of Costs. The Court refers to the decision of **Otieno Ragot & Company Advocate vs Kenindia Assurance Company Ltd [2023] KECA 1398 & (KLR)**. **Justice Joel Ngugi** stated as follows:

"A contextual reading of rule 7 of the Advocates Remuneration Order, section 51 of the Advocates Act and our decided cases, in my view, yields the following six propositions as a starting point for analysis:

a. An advocate is required to serve his client with the totality of the claims he has against the client in a Bill of Costs. That Bill serves the purpose of notifying the

client what claims the advocates has against the client; and the basis for the claim. It is, therefore, incumbent upon the advocate to include the totality of his claim in the Bill of Costs so that the client can determine whether to contest it or not; and if to contest, what aspects of it to contest.

b. When a Bill of Costs has been served on the client and the amount is disputed or the client otherwise fails to pay, it proceeds to taxation. The Bill of Costs provides the only basis upon which taxation proceeds.

c. Once a Bill of Costs is taxed by a taxing master and a ruling arrived at, the door is closed on the advocate to add any further claims against the client based on their representation of the client in the underlying matter from the date the Bill of Costs was served on the client.

d. After the taxation, the total amount owing to the advocate is included in a Certificate of Costs. That amount is the totality of the indebtedness of the client to the advocate. The only other amount the advocate can charge from that date are interests on the taxed

amounts; and costs for the taxation or adoption proceedings.

e. If the advocate (or the client) is dissatisfied with the ruling of the taxing master and the amount payable as contained in the Certificate of Costs, the only recourse allowed in law is to file a reference under rule 11 of the Advocates Remuneration Order.

f. If such a reference is not filed, the amount reflected in the Certificate of Costs is the final amount payable to the advocate only subject to interest at court rates which is at the discretion of the court that adopts the Certificate of Costs as a judgment....

.... The crux of the matter is that the appellant/advocate did not, in its Bill of Costs drawn and served on the client/respondent, include the potentially allowable interest of 14% p.a. The advocate only claimed the interest, for the first time, in the adoption proceedings under section 51(2) of the Advocates Act. The appellant insists that he was allowed to do so and that,

conversely, the Court was obligated to award them the interest.

As should be obvious from the unbundling of rule 7 of the Advocates Remuneration Order and section 51(2) of the Advocates Act above, it was not open to the appellant to claim the potentially permissible interest rate of 14% for the first time during adoption proceedings under section 51(2). This is because it was incumbent upon the advocate to put the client on notice that he intended to claim the interest at the point at which he drew the Bill of Costs. He did not. If an advocate is interested in claiming the potentially allowable interest at 14% p.a., he must make the claim in the Bill of Costs.

Once the advocate includes the claim of interest, it must be litigated before the Taxing Master in the taxation proceedings. If it is awarded by the Taxing Master, it would be well and good for the advocate.

However, if it is not awarded in the taxation proceedings and included in the Certificate of Costs, the advocate must challenge the omission in a reference to the court under rule 11 of the Advocates Remuneration Order. It is not open to the advocate to spring the claim of interest for the first time at the enforcement proceedings under section 51 of the Advocates Act.

To reiterate, the policy rationale for this interpretation is that the advocate should put the client on notice about the totality of the claim he has against the client at the earliest instance. There is a policy preference against an advocate making piecemeal claims against the client. Requiring an advocate to raise the claim for interest at the earliest instance gives the client an opportunity to object to any delays by the advocate in raising the Bill of Costs. This, in turn, acts as a disincentive for advocates to needlessly delay raising a Bill of Costs with the sole objective of increasing the amounts due through the allowable interests under rule

7 of the Advocates Remuneration Order. Conversely, it incentivizes clients to promptly pay the amounts due to the advocate as claimed in the Bill of Rights or raise an objection promptly.

In the present case, the appellant neither claimed the interest at 14% p.a. in his Bill of Costs nor filed a reference under rule 11 of the Advocates Remuneration Order. Consequently, it was improper for the appellant to raise the claim for the first time in the section 51(2) proceedings. It follows that the learned judge did not misapprehend the law or abuse his discretion in disallowing the claim.”

18. In absence of evidence that the issue of interest was raised in the Bill of Costs or raised prior to the taxation, the Court declines to allow interest from the date of filing the Bill of Costs. Interest is awarded from the date of filing this Motion. This Court has the discretion to award

such interest pursuant to **Section 26 of the Civil Procedure Act.**

19. As to costs, the same follow the event unless ordered otherwise. The Court awards the costs of the Motion to the Advocate/Applicant.

Determination

20. The Advocate/Applicant's application by way of a Notice of Motion dated 18.3.2025 is allowed in the following terms:

1) Judgment be and is HEREBY entered in favour of the Applicant as against the Respondent for the sum of Kenya Shillings Eleven Million, Six Hundred and Fifty-Eight Thousand Only (Ksh.11,658,000.00) being the taxed and Certified Costs payable to the Applicant by the Respondent.

2) Interest is HEREBY awarded on the aforesaid amount of Kenya Shillings Eleven Million, Six Hundred and Fifty-Eight Thousand Only (Ksh.11,658,000.00) at fourteen percent (14%) per annum from the date of filing the Notice of Motion dated 18.3.2025 until payment in full.

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3) A decree be and is HEREBY issued pursuant to the Judgment and Order in prayer (1) and (2).

4) The costs of the application be borne by the Respondent.

21. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS
16TH DAY OF APRIL, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Kirimi for the Applicant.

N/A for the Respondent.

Mr. Peter Wabwire - Court Assistant.