

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELC. CASE NO. 868 OF 2016

GULF AFRICAN BANK LIMITED.....
.....APPELLANT

- VERSUS -

MOHAMED ADAN BARRE.....
.....RESPONDENT

RULING

1. Being aggrieved by the ruling of Hon. Judith Omollo, the deputy registrar delivered on 24th March, 2025, the appellant filed the memorandum of appeal dated 26th March, 2025 challenging the whole decision on the following grounds:

- 1. The deputy registrar failed to consider that the respondent failed to honour his undertaking to pay the taxed costs expeditiously.***
- 2. The deputy registrar failed to award interest for breach of undertaking.***
- 3. The deputy registrar failed to consider the time value for money concept that allowed the payment of interest over delayed payments.***
- 4. The deputy registrar failed to consider that where the decree is silent on interest the same is deemed payable from the date of taxation.***
- 5. The deputy registrar failed to consider and allow prayer 2 of the notice of motion dated 12th November, 2024.***

6. The deputy registrar failed to consider the legal authorities submitted.

2. The appellant seeks the following orders:-

a. The present appeal be allowed and the ruling dated 24th March, 2025 be set aside.

b. The notice of motion dated 12th November, be allowed as prayed.

c. This appeal be allowed with costs.

3. The grounds of appeal were canvassed through written submissions. The appellant filed its written submissions dated 3rd June, 2025. While relying on the case of **Nderi & Kiingati Advocates v Kiruti & Company Advocates [2021] KEHC 9236(KLR)**, the appellant submitted that the failure to honour the terms of the undertaking deprived the appellant of interest on costs for all these years since 2019 despite numerous reminders. Further, that courts have held that money held by a person against the interest of the deprived over a period of time ordinarily, loss occurs in that the owner of the funds had plans on how to invest or spend that money. To buttress further, reliance was placed in the cases of **Gladys Mukwalu Marangu & Another v Emilio Marangu M'ndiri & another [2008] eKLR**, **Khetias Garments Limited v Cherono (suing as the legal administrators of the estate of the late Purity Kangogo Jebiwott-deceased)**

[2024] KEHC 10962 (KLR), and Manson Onyongo Nyamweya v Kithure Kindiki & Omwanza Ombati [2016] KEHC 490 (KLR).

4. The appellant further submitted that the deputy registrar failed to award interest at the rate of 14% per annum and further failed to consider that the notice of motion dated 12th November, 2024 was brought under **Order 22 Rule 18** of the **Civil Procedure Rules** which ought to have been granted as leave to dispense with the notice to show cause had been applied for.
5. The appellant filed written submissions dated 19th March, 2025 and submitted on interests as further directed by the court. The appellant reiterated its earlier submissions, and maintained that despite numerous reminders to pay the taxed costs, the judgment debtor has refused to settle the taxed costs despite his personal undertaking and deprived the decree holder's advocate of the taxed costs.
6. The respondent did not file his written submissions. As it were, the memorandum of appeal is unopposed. Be that as it may, and in my view, the issue for determination is *whether the appeal has merit.*

7. The jurisdiction invited by the appellant in this matter entitles this court to revisit the evidence on record, evaluate it and arrive at its own conclusion. Often times, an appellate court will not interfere with the findings of fact by the trial court unless they were based on no evidence at all, or were arrived at on a misapprehension of it or the trial court is shown to have acted on wrong principles in arriving at those findings as it was held in **Mwanasokoni versus Kenya Bus Service Ltd 1982 - 88 I KAR 278.**
8. The appellant filed the notice of motion dated 12th November, 2024 expressed to be brought under **Sections 1A, 1B,34,38,** and **63** of the **Civil Procedure Act** and **Order 22 Rule 18(2)** of the **Civil Procedure Rules** seeking the following orders:-
- 1. The judgment debtor be ordered to forthwith pay the taxed costs of KShs. 2,009,370.88 as at 30th October, 2024 together with interest at 14% per annum from 1st November, 2024 until payment in full in accordance with the undertaking as to costs dated 23rd October, 2016.***
 - 2. In default of payment of the taxed costs with accrued interest, the court do order the judgment debtor be arrested and show cause why he should not be committed to civil jail for 6 months.***

3. Costs of the application in favour of the 3rd defendant/deeree holder in any event.

9. The application was premised on the grounds *inter alia* that the certificate of taxation dated 14th November, 2019 has not been set aside and the judgment debtor filed an undertaking dated 23rd October, 2016 to pay all taxed costs after discontinuance of the suit. The application was supported by the affidavit of Lawi Sato, an employee of the appellant. The appellant deposed that on 23rd October, 2016, the respondent discontinued the suit and filed a personal undertaking as to costs committing to pay the taxed costs. However, he refused to honour the undertaking.
10. It was further deposed that costs were taxed and a certificate of taxation for Kshs.1,135,853.14/- dated 14th November, 2019 was issued and this sum has increased on account of interest. The appellant deposed that the taxed costs have accrued interest and as at 30th October, 2024, the same was Kshs.2,009,370.88/-.
11. This application was unopposed, and in the impugned ruling delivered on 24th March, 2025, the deputy registrar allowed the application save for the interest on costs as it can be seen in the first paragraph thereon. The deputy registrar was of the view that interest on costs can only be computed if there is a special order for interest at the time judgment was entered on

costs. That in this case, judgment on costs was entered on 30th May, 2017 and there was no order for interest on the taxed costs.

12. Having carefully analyzed the application before the deuputy registrar, I would agree with the appellant that while the judgment delivered on 30th May, 2017 was silent on interest on costs, the same becomes payable after taxation. In this case, the certificate of taxation was awarded in the party and party bill of costs dated 14th November, 2019 in the sum of Kshs.1,135, 853.14/-. The same was sent to the respondent vide the letter dated 18th November, 2019. Despite the requests made to settle the taxed amount, the respondent has failed and refused to do so.

13. Section 51(2) of the Advocates Act is clear that the certificate of taxation of the taxing officer unless set aside or altered by the court is final in regard to the amount of costs covered. The courts have affirmed the entitlement to interest on taxed costs once the amount due has been ascertained. In **Lubulellah & Associates Advocates v N.K. Brothers Ltd [2014] eKLR**, the Court of Appeal held that interest on taxed costs is payable under **Rule 7 of the Advocates (Remuneration) Order** and that the purpose of such

interest is to compensate the successful party for the delay in settlement of the costs due.

14. Similarly, in **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR**, the court reiterated that once costs are taxed and remain unpaid, interest at 14% per annum may properly be awarded in accordance with **Rule 7**.

15. **Section 26 (2) of the Civil Procedure Act** provides:-

“Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.”

16. **Section 27 (2) of the Act** further provides:-

“The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”

17. In view of the above provisions of the law, the appellant is entitled to interest at the rate of 14% per annum from 14th November, 2019 when the certificate of taxation was issued until payment in full. On the other prayers, I note that the same were allowed as prayed.

18. The memorandum of appeal dated 26th March, 2025 has merit and it is hereby allowed as in the following terms:-

- i. Bearing in mind that the notice of motion dated 12th November, 2024 was allowed as prayed, save on the issue of costs, the same is set aside to the extent that the ruling disallowed interests on costs.***
- ii. The notice of motion dated 12th November, 2024 is hereby allowed, and the appellant is entitled to interest on costs as per the certificate of taxation issued on 14th November, 2024 awarding the sum of Kshs. 1,135, 853.14/- at the rate of 14% per annum from 14th November, 2024 until payment in full.***
- iii. The appellant is awarded the costs of the appeal, the same to be borne by the respondent.***

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 21ST DAY OF APRIL, 2026.**

**HON. MBOGO C.G.
JUDGE
21/04/2026.**

In the presence of:

*Ms. Benson Agunga - Court assistant
Mr. Anzala holding brief for Mr. Allen Gichuhi for the 3rd
Defendant/Applicant*