



Ombuna Ongeri & Company Advocates v Corporate Insurance Company Limited (Miscellaneous Civil Application E118 of 2025) [2026] KEHC 5345 (KLR) (23 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5345 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E118 OF 2025
FN MUCHEMI, J
APRIL 23, 2026**

BETWEEN

OMBUNA ONGERI & COMPANY ADVOCATES ADVOCATE

AND

CORPORATE INSURANCE COMAPNY LIMITED CLIENT

RULING

Brief facts

1. The application dated 3rd December 2025 seeks for orders of entering judgment in favour of the applicant for Kshs. 129,900/- pursuant to the ruling delivered on 10th November 2025. The applicant further seeks for interest to be provided for at 14% per annum from 8/09/2025 until payment in full.
2. The respondent filed a Replying Affidavit dated 4th March 2026 in opposition to the application.

Applicant's Case

3. The applicant states that its bill of costs dated 23rd June 2025 has since been taxed at Kshs. 129,900/- and a certificate of taxation issued on 17th November 2025. The applicant avers that interest is payable at 14% per annum from the date of service of notice.
4. The applicant states that the respondent has continually neglected or failed to pay legal fees duly earned despite demands and notices. Furthermore, the certificate of taxation has not been disputed or set aside and neither is there any dispute regarding retainer. The applicant further states that he has demonstrated through evidence that he is entitled to the orders sought.

The Respondent's Case

5. The respondent admits that a Bill of Costs was filed by the applicant but denies that the resulting Certificate of Taxation is final, undisputed or enforceable in the manner alleged. The respondent



- states that prior to and during taxation, auctioneers acting on instructions levied distress against their property and carried away various household and office goods. As a result, their premises were left in disarray and critical files, documents and paperwork were displaced and rendered inaccessible and thus they were unable to access their records to ascertain the nature of documents and pleadings served.
6. The respondent states that by the time they were able to reorganize their premises and regain access to their paperwork, taxation had already been concluded and a Certificate of Taxation issued. The respondent avers that its failure to participate in the taxation proceedings was neither deliberate nor intended to obstruct the course of justice but was occasioned by circumstances beyond its control.
 7. The respondent states that the applicant has failed to satisfy the mandatory requirements under Section 51(2) of the *Advocates Act* to warrant entry of judgment. Further, the certificate of taxation relied upon is irregular, disputed and premature and cannot form a proper basis for entry of judgment. The respondent disputes both the quantum of fees and the alleged date from which the interest is claimed. The respondent argues that the claim for interest at 14% per annum is unsupported by evidence of a valid fee agreement or proper notice as required by law.
 8. The respondent states that it has not admitted the fees as claimed. Further the applicant has not placed before the court any evidence of a valid advocate client agreement capable of attracting interest at the rate of 14% per annum from 8th September 2025. Additionally no proper or lawful notice of intention to charge interest has been demonstrated as required under the Advocates (Remuneration) Order.
 9. Directions were issued that parties put in written submissions and the record shows that the respondent complied by filing submissions on 4th March 2026. The applicant on the other hand had not filed his submissions by the time of writing this ruling.

The Respondent's Submissions

10. The respondent relies on the cases of Ahmednadir Abdikadir & Co. Advocates vs National Bank of Kenya Limited (no citation given); Kipkorir Titoo & Kiara Advocates vs Deposit Protection Fund Board (no citation given) and Kiptoon & Co. Advocates vs Kirui (Miscellaneous Application No. E001 of 2020) [2023] KEHC 3523 (KLR) and submits that Section 51(2) of the *Advocates Act* is not automatic as it only applies where the certificate of taxation is not set aside or altered and is undisputed. The respondent has expressly deponed that applications to set aside the certificates of taxation have been filed.
11. The respondent refers to paragraph 7 of the Advocates (Remuneration) Order and submits that the applicant has not produced any fee agreement executed between the parties nor has he exhibited a notice of intention to charge interest as required in law. Thus, in the absence of such foundational documents, the claim for interest is wholly untenable.
12. Relying on the cases of Gulf Fabricators Limited vs Great Lakes University Kisumu (Civil Suit E13 of 2022) [2024] KEHC 16546 (KLR) and Julius Wafula Chebi vs Gibon Akifuma Egap Solutions limited (Cause 1013 of 2013), the respondent submits that failure to participate was neither deliberate nor contumacious and thus it should be afforded an opportunity to ventilate its grievances.

The Law

Whether the application has merit.

13. The applicant argues that its bill of costs dated 23rd June 2025 was taxed and allowed at Kshs. 129,900/- on 10th November 2025 and a certificate of taxation issued. Thus the applicant prays that judgment



be entered for the said sum. The respondent opposes the entry of judgment and argues that it was unable to participate in the taxation proceedings as auctioneers distressed their goods in their offices and therefore they were unable to access or ascertain their documents.

14. I have perused the record and noted that the applicant's bill of costs dated 23rd June 2025 was taxed and allowed at Kshs. 129,900/-. A certificate of taxation was issued on 17th November 2025.

15. Taxation is a matter that is guided by the Advocates Act and the Advocates Remuneration Order, Section 51(2) of the Advocates Act which provides that:-

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.

16. The above provision is clear that the certificate of costs once issued by the taxing officer is final unless set aside or altered by the court.

The court may also make an order that judgment be entered in terms of the amount in the certificate of costs in the case of an advocate client bill of costs. In the instant case, the respondent states that they were unable to participate in the taxation proceedings as they were in the process of being auctioned rendering access to their documents impossible. On perusal of the record, the bill of costs and notice of taxation was served upon the respondent on 8th August 2025. Despite service, the respondent never filed a response to the bill or attended the hearing of the same. The respondent never filed any reference disputing the taxed costs until it was served with the present application and annexures. Together with its response to the said application, the respondent filed an application to set aside the certificate of taxation. It is noted that the respondent did not file any application to set aside the taxation ruling until 4th March 2026. This court is not convinced by the averments of the respondent that failure to file a reference was inadvertent and beyond its control. The respondent has raised vague averments in its application and did not provide any particulars as to when the auctioneers visited them and what followed thereafter.

17. It is noted that the respondent was aware of the bill since 8th August 2025 and only filed its application to set aside on 4th March 2026, which was about seven (7) months after the ruling of the taxing master. It is my view that the respondent chose not to participate in the taxation proceedings and has now come into the arena a bit too late. In that regard, it is my view that the respondent has not demonstrated that the court should exercise its discretion in its favour. The respondent has not denied that it entered into an advocate client relationship with the applicant as the applicant has annexed the instruction letter dated 27th May 2022 from the respondent. This calls the respondent to pay the applicant the requisite legal fees of Kshs. 129,900/- plus interest at court rates.

18. It is thus, my considered view that the application dated 3rd December 2025 has merit. Judgment is hereby entered in favour of the applicant against the respondent for Ksh.129,900 plus interest at rate of 14% per annum. The costs of this application are hereby awarded to the applicant.

19. Consequently, the respondent's application dated 4th March 2026 for setting aside has been overtaken by events and is hereby struck out with costs to the applicant.

20. It is hereby so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 23RD DAY OF
APRIL 2026.**

F. MUCHEMI

JUDGE

