

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

MISCELLANEOUS CIVIL APPLICATION NO. E117 OF 2025

OMBUNA ONGERI & CO.

ADVOCATES.....ADVOCATE/

APPLICANT

VERSUS

CORPORATE INSURANCE CO.

LTD.....CLIENT/RESPONDENT

R U L I N G

Brief facts

1. The application dated 3rd December 2025 seeks for orders of entering judgment in favour of the applicant for Kshs. 135,775/- 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. 135,775/- 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 **Ahmednasir 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. 135,775/- 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. 135,775/-. 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 the respondent did not file any application to set aside until 4th March 2026. The 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 very vague averments in its application and has not provided any particulars as to when the auctioneers visited them and what may have taken place thereafter. The respondent was aware of the bill since 8th August 2025 and filed an application to set the ruling aside on 4th March 2026, which is about seven (7) months later. It is my view that the respondent chose not to participate in the taxation proceedings and as an afterthought, it has presented this application a bit late in the day.

17. It is clear that the respondent has failed to demonstrate that this court should exercise its discretion in its favour. Furthermore, 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.

18. Consequently, I find this application successful. I hereby enter judgment of Kshs. 135,775/- plus interest at the rate of 14% per annum from the date of service of the notice until payment in full.
19. I find the respondent's application dated 4th March 2026 seeking to set aside the ruling on taxation lacking merit. I hereby dismiss it with costs.
20. The costs of this application shall go to the applicant.
21. It is hereby so ordered.

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

**F. MUCHEMI
JUDGE**