



**Murage Juma & Co. Advocates v Kenya National Chamber of Commerce & Industry
(Miscellaneous Application E172 of 2021) [2025] KEHC 2844 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2844 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E172 OF 2021**

A MSHILA, J

FEBRUARY 28, 2025

BETWEEN

MURAGE JUMA & CO ADVOCATES ADVOCATE

AND

KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY CLIENT

RULING

1. Before this Court are two applications, one by the Advocate/Applicant dated 7th March 2023 and the other by the Client/Respondent dated 14th April, 2023. This court directed that the applications be canvassed contemporaneously by way of written submissions. In the Advocate's/Applicant's Notice of Motion application dated 7th March, 2023 the advocates seek that judgment be entered for the Advocate/Applicant against the Client/Respondent in the sum of Kshs.9,389,270/- being the sum certified by the Deputy Registrar as costs on 24th February, 2023. The Advocate/Applicant also seeks that the said sum be paid with interest at the rate of 14% per annum from the date of filing the Bill of Costs, that is from 4th August, 2021 until payment in full pursuant to Rule 7 of the Advocates Remuneration Order.
2. The Advocate's/Applicant's application is supported by an affidavit of the same date sworn by Joseph N, Murage, the advocate, stating as follows;-
 - a. The Advocate/Applicant filed a Bill of Costs dated 4th August 2021 on 11th August 2021.
 - b. The Bill of Costs was taxed on 23rd January, 2023 in the sum of Kshs.9,389,270/- all inclusive.
 - c. The Client/Respondent has not filed any reference challenging the Certificate of Taxation of the Deputy Registrar.
 - d. The Certificate of Taxation was extracted and served upon the Respondent to pay but the Respondent has refused to pay.



3. The Client/Respondent filed a Chamber Summons application dated 14th April, 2023 seeking the following orders:-
 - a. There be a stay of execution of the Ruling entered by Hon. Wilson Rading, Deputy Registrar on 23rd January 2023 and the resultant Certificate of Taxation dated 24th February, 2023 to the extent that they relate to items 1 and 2 of the Respondent's Bill of Costs dated 5th August, 2021.
 - b. The application be heard in priority over the Respondent's application dated 7th March 2023.
 - c. The court be pleased to enlarge time for the Applicant to file a Notice of Objection to the Ruling delivered on 23rd January, 2023 and the resultant Certificate of Taxation issued by the Hon. Wilson Rading on 24th February 2023 in respect of items 1 and 2 of the Respondent's Bill of Costs dated 5th August, 2021.
 - d. That the Notice of Objection dated 23rd March, 2023 be deemed as duly filed.
 - e. The court be pleased to set aside the Ruling delivered on 23rd January 2023 and the resultant Certificate of Taxation issued by the Hon. Wilson Rading on 24th February 2023 in respect of items 1 and 2 of the Respondent's Bill of Costs dated 5th August, 2021.
 - f. The court be pleased to re-assess items 1 and 2 of the Respondent's Bill of Costs dated 5th August, 2021 and find that the sum due to the advocate in the taxation cause is as presented in the Applicant's submissions dated 29th May, 2021.
 - g. The original case file, Kiambu JR Application No.15 of 2018 be recalled for purposes of ascertaining and re-assessment of quantum on items 1 and 2 of the Advocates/Client Bill of Costs dated 5th August, 2021.
 - h. In the alternative to prayer (f) items 1 and 2 of the Bill of Costs dated 5th August 2021 be remitted to another taxing officer for fresh taxation.
4. The application is supported by the affidavit dated 14th April 2023 sworn by the client stating the following:-
 - a. Although submissions for the Bill of Costs were filed by the parties on 25th October, 2021 the Ruling was delayed for over 13 months.
 - b. The Ruling was finally delivered on 23rd January 2023 without notice to the client. A Certificate of Taxation was issued on 24th February, 2023. The Respondent learnt about the Certificate of Taxation when it was served upon him by the advocate.
 - c. The Applicant filed an Objection and requested for a copy of the reasoned Ruling.
 - d. The client could not have filed its Objection in time due to the passage of time from the date of reserving the matter for Ruling and the absence of Notice of the Ruling to the client.
 - e. The Ruling and taxation violated settled principles of taxation.
 - f. The taxing master failed to ascertain the correct subject matter of the suit for the purpose of taxation.
 - g. The taxing master failed to give weight to the relevant factors on record and well settled principles of law considering the quantum pertaining to items 1 and 2 of the Bill of Costs dated 5th August, 2021.



- h. The taxing master failed to give sufficient reasons for the grounds to justify the quantum for item 1 and 2 of the Bill of Costs.
- i. The taxing master ignored principles of taxation, misdirected himself on discretion and awarded costs that are manifestly excessive in respect of items 1 and 2 of the Bill of Costs.

Advocate's/applicant's Submissions

5. The Advocate/Applicant submitted that the entire Client's/Respondent's application is based on misrepresentation, deceit and concealment of material facts. Although the Client/Respondent stated that it had no notice of the delivery of the impugned Ruling, the Deputy Registrar had notified the parties on 11th January 2023 through email that the Ruling would be delivered on 19th January 2023.
6. The Ruling was not delivered on 19th January as scheduled. The Advocate/Applicant followed up the Registry and he was informed that the Ruling had been rescheduled for 23rd January 2023. The Advocate/Applicant passed this information to the Client/Respondent via email. The Ruling was finally delivered on 23rd January 2023 and the same was sent via email to both the parties.
7. The Ruling dated 23rd January 2023 had detailed reasons and the Client/Respondent did not need any further reasons from the taxing master to file a reference. The Advocate/applicant relied on *Ahmednassir Abdikadir & Co. Advocates v National Bank of Kenya Ltd (2) (2006) 1 EA 5*.
8. The Client's/Respondent's Notice of Objection filed on 4th April 2023 was filed out of time contrary to Rule 11 of the Advocates Remuneration Order. The Notice of Objection was filed before the reasons sought by the Client/Respondent were availed. For the principles guiding the court in exercise of its discretion to extend time, the Advocate/Applicant relied on *Nicholas Kiptoo Korir Arap Salat v Independent Electoral & Boundaries Commission & 7 Others (2014) eKLR*, *Harun Osoro Nyamboki v Peter Mujunga Gathuru (2019)eKLR* and *Director of Public Prosecutions v Michael Sistu Mwaura Kamau & 4 Others (2019)eKLR*. The Advocate/Applicant submitted that the Notice of Objection is incompetent and the prayer for enlargement of time cannot be granted as that would be to endorse an illegality.
9. The Advocate/Applicant stated that where the taxing master adheres to the principles of taxation in exercising its discretion, the court should not interfere with the discretion exercised. The Advocate/Applicant relied on *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board (2005)eKLR*. The taxing master rightly deduced that the suit was on constitutionality of the recruitment and the process of recruitment of the members of the Municipal Boards under the Urban and Cities Act 2011. He categorized the suit under the Constitutional law discourse.
10. Since there was no value of the subject matter, the taxing master examined the complexity of the suit. He found that the suit is novel and not an everyday matter. The issues raised were of national importance and were adequately ventilated and settled. Some of the issues included the conferment of city, municipality and town status and who would superintend the process. The award of Kshs.4,000,000/- for item 1 as instructions fees was therefore well justified.
11. As regards getting up fees, item 2, the taxing officer applied the proper principle of 1/3 of the instruction fees rule prescribed in subparagraph 2, Schedule 6 of the Advocates Remuneration Order to arrive at Kshs.1,333,333/-. The taxing master considered the fact that the matter was defended, confirmed for hearing and went through a full hearing.



12. The Advocate/Applicant relied on Section 51(2) of the *Advocates Act* that provides that the Certificate of Taxation consequent to taxation of a Bill of Costs shall unless 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. The Advocate/Applicant cited *Musyoka & Wambua Advocates v Rustam Hira Advocates (2006) eKLR*.
13. The Advocate/Applicant also relied on Rule 7 of the Advocates Remuneration Order for its claim of 14% interest per annum on the awarded sum. The Advocate/Applicant relied on *Amondi & Co. Advocates v County Government of Kisumu (2022) eKLR*.

Client's/ Respondent's Submission

14. The Client/Respondent in its application for enlargement of time failed to file Written Submissions as directed therefore this court will rely on the Affidavit sworn by Stanley Kiplagat Baskwony dated 14/04/2023 in making its analysis and determination.

Issues For Determination

15. After reading the submissions and affidavits made on the two applications this court has framed the following issues for determination;
 - a. Whether this court should enlarge time to enable the Client/Respondent to file an objection and a reference against the ruling of the Taxing Master;
 - b. Whether the Advocate's/Applicant's application dated 7th March 2023 for judgment based on the Certificate of Costs is merited.
 - c. Whether interest at 14% per annum on the taxed costs is merited.

Whether this court should grant the Client/Respondent extension of time to enable it file an objection and a Reference against the Ruling of the Taxing Master out of time

16. Paragraph 11 of the Advocates Remuneration Order (ARO) stipulates as follows on the filing of reference objecting to the decision of the Taxing Master:-
 - “ 1) Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation which he objects.
 - 2) The Taxing Officer shall forthwith record and forward to the Objector the reasons or his decision on those items and the Objector may within fourteen days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - 3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - 4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon



giving to every other interested party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have expired.”

17. In the case of the County Executive of Kisumu v County Government of Kisumu and 8 Others [2017] eKLR the Supreme Court of Kenya held as follows on the discretion of the court to enlarge time:

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as “the underlying principles that a Court should consider in exercise of such discretion:-

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the Respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

18. The impugned taxation Ruling dated 23rd January, 2023 was delivered remotely through email pursuant to the Chief Justice's Practice Directions for the protection of judges, judicial officers, judicial staff, other court users and the general public risks associated with the global corona virus pandemic (Gazette Notice No. 3137 published in the Kenya Gazette Vol.cxxx11-No.67 of 17th April 2020). The Advocate/Applicant sent a letter to the Client/ Respondent dated 27th February, 2023 forwarding the Certificate of Taxation dated 24th February, 2023 and demanding for the payment of the sum of Kshs.9,389,270 being the taxed amount.

19. The Client/Respondent stated that it had no notice of the delivery of the Ruling until it was served with the Certificate of Taxation. However, looking at the Advocate's/Applicant's replying affidavit dated 11th May, 2023 the Deputy Registrar sent an email to both parties on 11th January, 2023 stating that the Ruling would be delivered via email. The said Ruling was delivered to both parties via email on 23rd January, 2023.

20. The Client/Respondent did not give any plausible reasons for the delay in filing the Objection and Reference in time from the date of receipt of the Ruling being 23rd January, 2023. The said Ruling had sufficient reasons given for the items 1 and 2 sought to be challenged in the Bill of Costs dated 5th



August, 2021 and hence no further reasons were necessary from the taxing master. In the circumstances therefore this court is satisfied that it cannot exercise its discretion to enlarge time since no reasonable or satisfactory explanation was given for the delay.

Whether the Advocate's/Applicant's application dated 7th March 2023 for judgment based on the Certificate of Costs is merited.

21. The Advocate's/Applicant's application dated 7th March 2023 is predicated under Section 51 of the Advocates Act, Cap 16 Laws of Kenya. Section 51(2) of the Advocates Act provides as follows: -

“ 51

(2) The certificate of the taxing officer by whom any bills has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount 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”.

22. The only instances where a Court may not enter judgment on a Certificate of Costs is where the certificate has been set aside, varied and/or altered or the retainer is disputed. Refer to the case of Republic -vs- City Council of Nairobi Ivyland Park Ltd (Interested Party) Ex-parte Inderpal Singh & 2 others (2021) eKLR, where the Court held:-

“It is an established position of law that the only reason a court of law cannot enter judgment on a certificate of costs is if the same has been set aside or altered, or where there is an issue of retainer.”

23. Based on the foregoing and the fact that there is no challenge to the certificate of costs dated 24th February 2023, this Court has no option but to allow the advocate's/applicant's application dated 7th March 2023;

Whether interest at 14% per annum on the taxed costs is merited

24. The Advocate/Applicant also sought interest at 14% from the date of filing the Bill of Costs being 4th August 2021 until payment in full pursuant to Rule 7 of the Advocates Remuneration Order;

25. In Lubulellah & Associates Advocates v N K Brothers Limited [2014] KEHC 8685 (KLR) the Court held the following regarding the issue of interest under Rule 7 of the Advocates Remuneration Order:-

“ 30. It is clear that the said Rule 7 deals with interest charged by an advocate of its claim for disbursements and costs which is chargeable from the expiration of one (1) month from the date of his delivery of its bill to its client. This interest is distinguishable from the interest that this court can award.

31. As this court held in the cases of HC Misc No 486 and 487 of 2012 E.W. Njeru & Co Advocates (Supra), if an advocate files his Bill of Costs without raising the issue of interest, then he forfeits interest as provided for under Rule 7 of the Advocates Remuneration Order. The court can only award the interest at court rates.”



32. The above rule stipulates that such claim for interest must be raised for it to start to accrue after the expiration of one month from the delivery of the bill of costs to the client.
33. In the case of Kerongo & Company Advocates Vs Africa Assurance Merchant Co. Limited [2019] eKLR the court held;
‘An advocate who does not provide proof that he had raised the issue of interest before the amount in the Bill of Costs has been paid or tendered in full will not be paid the interest chargeable under Rule 7 of the Advocates Remuneration Order. As the advocates herein had not demonstrated that they had raised the issue of interest as aforesaid, they could not therefore be awarded interest at fourteen (14%) per cent per annum.’
34. After careful perusal of the court record this court notes that the Applicant did annex a copy of the Demand Letter to the application; The notice relates to the Certificate of Taxation but nowhere is there any evidence of the claim for interest being raised one (1) month after filing of the Bill of Costs. Therefore, in line with Rule 7, the Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent within the stipulated timelines, the claim is therefore forfeited.

Findings And Determination

26. From the forgoing this court makes the following findings and determinations;
- (i) This Court finds the application dated 14th April, 2023 for enlargement of time to file a Reference to be devoid of merit and it is hereby dismissed.
 - (ii) This Court finds the application dated 7th March 2023 is found to be partially meritorious and it is hereby partially allowed;
 - (iii) The Certificate of Taxation issued on 24th February, 2023 in the sum of Kshs.9,389,270/- is hereby adopted as a Judgment of this court. Judgment be and is hereby entered in favour of the Applicant/Advocates in the sum of Kshs.9,389,270/-
 - (iv) The prayer for interest is found to be devoid of merit and it is hereby disallowed.
 - (v) Each party to bear own their costs on each of the applications.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF FEBRUARY, 2025.

HON. A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

N/A for Applicant

Njuguna h/b for Munawa for the Respondent

