



**Tom Ojienda & Associates v Nairobi City County (Judicial Review Miscellaneous Application E114 of 2021) [2025] KEHC 5043 (KLR) (Judicial Review) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5043 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E114 OF 2021  
RE ABURILI, J  
APRIL 28, 2025**

**BETWEEN**

**PROF. TOM OJIENDA & ASSOCIATES ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY ..... RESPONDENT**

**RULING**

1. This is an advocate/ client matter for recovery of advocates' legal fees following legal representation of the client by the advocates in Nairobi High Court Judicial Review MISC ELC No. 72 of 2008.
2. I note that the matter was filed in the High Court prior to the promulgation of the 2010 Constitution although it was a land matter which transited into the new constitutional era before the establishment and operationalization of the Environment and Land Court.
3. The application dated 13<sup>th</sup> September, 2024 by the applicant/ advocate seeks orders of the court for entry of judgment on taxed costs of Kshs 3,604,540.50 as taxed on 13<sup>th</sup> March, 2023 and a certificate of costs dated 12<sup>th</sup> September, 2024, issued in favour of the advocate against the client/ respondent herein, Nairobi City County.
4. The applicant also seeks for interest on taxed costs, one month from service of the bill of costs upon the respondent/ client being from 2<sup>nd</sup> September, 2021, when the said bill of costs was served upon the respondent and that the applicant be allowed to execute judgment against the respondent.
5. The applicant also prays for costs of the application.
6. The application is brought under the provisions of section 51(2) of the *Advocates Act* and Rule 7 of the Advocates Remuneration Order.



7. The application was not opposed and neither did the respondents' representatives attend court on the hearing date despite service of a hearing notice upon them as per the affidavit of service sworn by Kyalo Kamina on 19<sup>th</sup> March, 2025 duly filed in court.
8. I have considered the application and the grounds in support thereof and the issue for determination is whether the prayers sought are merited.
9. Section 51 (2) of the [Advocates Act](#) provides that:

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”.
10. From the above provision, it is clear that 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. See Republic -vs- City Council of Nairobi Ivyland Park Ltd (interested party) Exparte Inderpal Singh & 2 others (2021) eKLR, where the Court held that:

“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.”
11. In the instant case, there is a retainer/ instruction note dated 10<sup>th</sup> August, 2015 issued to the advocate by the respondent client through the office of the County Attorney, instructing the advocate to take over the conduct of JR 72 of 2008 from Abwao E. Odhiambo Advocate and undertaking to settle the advocate's legal fees in accordance with the Advocates Remuneration Order.
12. Further, there is no evidence that the client settled the advocate's legal fees prior to or after taxation which taxation was carried out inter partes with each party filing written submissions to support their respective positions on the filed bill of costs.
13. Additionally, there is no reference filed challenging the taxation and neither has the certificate of costs dated 12<sup>th</sup> September, 2024 been disputed or set aside.
14. Accordingly, as there is no impediment to the entry of judgment on the certificate of costs, I hereby enter judgment for the advocate/ applicant against the client/ respondent in the sum of Kshs 3,604,540.50 as per the certificate of taxation dated 12<sup>th</sup> September, 2024.
15. As to whether interest claimed should be granted, Rule 7 of the Advocates Remuneration Order provides as follows regarding interest:

“An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”
16. The above provision has been interpreted differently by Courts until the Court of Appeal recently settled the position. Needless to stat that in the instant case, the advocates' bill of costs dated 22<sup>nd</sup> July, 2022 was served upon the client on 2<sup>nd</sup> September, 2021 as shown by the receiving stamp appended on the bill of costs.



17. I have perused the said bill of costs and I have not seen any demand for interest. What then is the effect of not demanding for costs at the time of serving of the bill of costs upon the client?
18. In *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR the High Court held that:
- “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. . .”
19. The above decision is self-explanatory that interest would only be chargeable one month from the date when the client was served with a bill of costs containing a demand therein that the advocate would charge interest.
20. As stated above, in the bill of costs and application for taxation of the said bill of costs by the advocate against the client, there is no demand for interest. The client therefore only came to learn of the issue of interest when it was served with the application dated 13<sup>th</sup> September, 2024 for entry of judgment on the certificate of costs.
21. From the above *Lubulellah* case, interest does not become automatically chargeable after the lapse of the one month from the date when the bill was served, unless, as stipulated in Rule 7 of the Advocates Remuneration Order, such claim for interest was raised.
22. The Court of Appeal, quite recently, discussed this issue of interest chargeable on costs at length in the case of *Otieno, Ragot & Company Advocates v Kenindia Assurance Co Ltd* (Civil Appeal 165 of 2019) [2023] KECA 1443 (KLR) (24 November 2023) (Judgment) as follows, inter alia:
- “20. With respect, in the circumstances of this case, I think the learned Judge was obliged to utilize the awarded interest rate of 14% p.a. This is because in this case, the appellant put the client on notice about his claim for interest at 14% p.a. under Rule 7 of the Advocates Remuneration Order. The client, then, specifically litigated the interest in the taxation proceedings – and was awarded the interest by the Taxing Master. The appellant, therefore, made this claim to the client a priori so as to notify the client he would be demanding interest. The Certificate of Costs could, at the time it was issued, only reflect the interest as it stood on the date it was issued. However, having lawfully and procedurally awarded the appellant the interest at 14% p.a. by dint of Rule 7 of the Advocates Remuneration Order, it would be absurd to hold that the rate could be changed at the discretion of the High Court if the client failed to settle the amounts claimed necessitating the appellant to lodge section 51(2) enforcement proceedings. In the present case, the appellant claimed and was awarded interest at 14% p.a. during taxation and, therefore, had no need to invoke Rule 11 of the Advocates Remuneration Order to challenge it. [emphasis added]
23. The Court of Appeal further stated:
- “22. . To reiterate, the rule of law announced in the companion case, *Kisumu Civil Appeal No. 129 of 2018*, to the effect that an advocate is not permitted to surcharge a client interest at the rate of 14% p.a. under Rule 7 of the Advocates Remuneration Order unless he notified the client of that charge in his fee note/



bill to the client and in his Bill of Costs as lodged in Court has no application in this case. This is because, here, the advocate included the interest in the Bill of Costs and benefitted from a favourable award by the Taxing Master. It was incumbent upon the respondent, if dissatisfied with the award, to challenge it by invoking Rule 11 of the Advocates Remuneration Order; and it did not do so.”[emphasis added]

24. The Court of Appeal did not stop there. It went further to clarify the position and to expunge any confusion on interest allowable on advocate / client costs and stated as follows, quite authoritatively:

“I believe that this decision and its companion one in Kisumu Civil Appeal No. 129 of 2018 will remove the cobwebs of confusion reigning in this area. It comes down to a salutary advice for advocates: if one hopes to claim the 14% p.a. interest under Rule 7 of the Advocates Remuneration Order on a fee note or Bill of Costs, one must make the claim in the fee note and/or Bill of Costs. If the interest is not claimed in the fee note or Bill of Costs, an advocate loses his right to claim for it subsequently. Similarly, if the interest of 14% under Rule 7 of the Advocates Remuneration Order is not specifically awarded during the taxation proceedings, the advocate must invoke Rule 11 of the Advocates Remuneration Order and file a reference to protest the omission. The advocate cannot wait to introduce the interest during enforcement proceedings under section 51(2) of the *Advocates Act*. If the advocate demands interest at that late stage, he will likely suffer two potential perils: the court can only award interest at earliest from the date of lodging the Bill of Costs; and the interest is at the discretion of the court. However, where the interest of 14% p.a. under Rule 7 of the Advocates Remuneration Order is specifically claimed in the Bill of Costs and awarded during the taxation proceedings, the interest will apply to the taxed amount until it is fully paid. An application under 51(2) of the *Advocates Act* will not act to reduce the interest rate or otherwise create a reservoir of discretion for the judge to change the interest rate.”[emphasis added]

25. For all the above reasons, I find that no interest is payable on the costs subject of these proceedings, the advocate having failed to demand for interest at the time of drawing or serving the bill of costs upon the client. The prayer for judgment on the certificate of cost dated 13<sup>th</sup> September, 2024 as per the taxation which took place on 13<sup>th</sup> March 2023 is allowed with an order that interest shall not be charged on the said taxed costs.

26. On whether the applicant should be allowed to execute against the Respondent, the law at section 25 of the *Government Proceedings Act* prohibits execution against the Government. The section provides:

25. Exclusion of proceedings in rem against the Government

- (1) Nothing in this Act shall authorize proceedings in rem in respect of any claim against the Government, or the arrest, detention or sale of any Government ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property.

27. The *Government Proceedings Act* applies to both the National and County Governments. It follows that the procedure established under section 21 of the *Government Proceedings Act* applies to the County Governments in the same manner as it applies to the National Government As far as satisfaction of orders and decrees against the Government are concerned. The section provides:

21. Satisfaction of orders against the Government



- (1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

28. Until and unless the above provisions of the law as read with Order 29 of the Civil Procedure Rules are adhered to, execution cannot issue against the Government.
29. Accordingly, the prayer for execution against the respondent is found to be incapable of being granted I these proceedings and is declined.
30. Judgment is entered in terms of the certificate of costs as assessed on 13<sup>th</sup> March 2024 and Decree and certificate of order on costs against the Government to issue in Form Nos. 22 and 23 of Appendix A of the Civil procedure Rules as prescribed under Order 29 Rule 3 with such variations as circumstances may require.
31. In order to avoid escalation of costs in this matter, and as the application is a procedural requirement under the law, I order that each party bear their own costs of the application.



32. I so order

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL,  
2025**

**R.E. ABURILI**

**JUDGE**

