



REPUBLIC OF KENYA



**Miyare t/a Miyare & Company Advocates v Kikambala Housing Estate Limited & another  
(Miscellaneous Application 76 of 2022) [2025] KEHC 12107 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION 76 OF 2022**

**F WANGARI, J**

**MAY 29, 2025**

**BETWEEN**

**GEORGE MIYARE T/A MIYARE & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**KIKAMBALA HOUSING ESTATE LIMITED ..... 1<sup>ST</sup> CLIENT**

**OSMAN ERDINC ELSEK ..... 2<sup>ND</sup> CLIENT**

**RULING**

1. By a Notice of Motion Application dated 28/08/2024 brought under the provisions of Sections 51 (1) and (2) of the *Advocates Act*, Order 51 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law, the Advocate/Applicant sought for the following orders: -
  - i. That the Honourable Court be pleased to enter judgement for the Advocate/Applicant against the Clients/Respondents in the sum of Kshs. 441,145/= as appears in the Certificate of Taxation dated 17.07.2024 together with interest at 14% per annum from 04.05.2022 until payment in full;
  - ii. Costs.
2. The grounds in support of the application are that the on 10.06.2024, the Learned Taxing Officer (Hon. Noelyne Akee Reuben (DR)) delivered a ruling on the Applicant's/Advocate's – Client Bill of Costs dated 04.04.2022 and taxed the same at Kshs. 441,145/=. Consequently, a Certificate of Taxation dated 17.07.2024 was issued.
3. The decision of the Learned Taxing Officer and the Certificate of Taxation have not been set aside and or varied by the Honourable Court. The Clients/Respondents have failed and/or refused to settle the taxed costs and the same remain unpaid to date. Accordingly, it is the Applicant's position that it is fair and just to have the application allowed as prayed.



4. The application is supported by an affidavit of even date sworn by Diana Achieng Advocate who is practicing as such in the Applicant's Firm. The basis of taxation is Mombasa Magistrate's Court Civil Case No. 2109 of 2016; *Elkanah Gekonge Mang'era v Kikambala Housing Estate Limited & Another*. Other than the annexures, the affidavit restates more or less the grounds in support of the application and I see no need to rehash the same.
5. The application is opposed. Through grounds of opposition dated 21.10.2024, the Respondents other than the 3<sup>rd</sup> aver that the application is bad in law and an abuse of process of law. That the application is brought on a provision of the law which is not applicable. That when the court delivered its ruling on 10.6.2024, it became functus officio on the matter.
6. That the court file before the court is for taxation of Advocate – Client Bill of Costs and Judgement can be entered on this file after taxation. That there is no provision provided for the prayers sought under the Advocate Remuneration Rules. Lastly that the ruling delivered on the Bill of Costs of the Advocate/Applicant on 10<sup>th</sup> June, 2024 was Kshs. 381,115/= by the Taxing Master and the Certificate of Costs dated 17<sup>th</sup> July, 2024 is Kshs. 441,145/= hence visible discrepancy.
7. Directions were taken to have the application canvassed by way of written submissions. Both parties duly complied with the directions. The Applicant's submissions are dated 5<sup>th</sup> November, 2024. The Applicant has cited various authorities among them *Musyoka Wambua Advocates v Rustam Hira Advocate* [2006] eKLR.
8. On the part of the Respondents, their submissions are dated 8<sup>th</sup> November, 2024. They have equally cited various authorities among them *Abmednasir Abdikadir & Company Advocates v National Bank of Kenya Limited* [2006] eKLR. The Applicant filed further submissions dated 17<sup>th</sup> December, 2024 which in essence sought to respond to the issues raised by the Respondents in their submissions. Other than the other authorities earlier cited, the case of *Otieno Amisi & Co. Advocates v Africa Merchant Insurance Company Ltd* [2018] KEHC 689 (KLR).
9. I am grateful to the parties for complying with the court's directions. I equally commend the industry they have exhibited by filing well researched submissions and citing various authorities which are a useful guide in determining the matter either way. I have given due consideration to both sets of submissions.

### **Analysis and Determination**

10. Having carefully considered the application, the grounds of opposition, submissions for and against, the authorities cited as well as the law, I discern the following being the issues for determination: -
  - a. Whether judgement ought to be entered as prayed; and
  - b. What is the order as to costs?
11. The legal basis of the application is section 51 (1) and (2) of the *Advocates Act* and Order 7 of the *Advocates (Remuneration) Order, 1962*. Section 51 (1) and (2) of the *Advocates Act* provides as follows: -
  - “(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
  - (2) 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.”

12. On the other hand, Rule 7 of the *Advocates (Remuneration) Order* provides thus: -

“ 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.”

13. Having carefully considered the respective parties’ written submissions, it was clear that the Certificate of Costs that was issued by the Taxing Officer had not been set aside and/or altered.

14. In *Republic v City Council of Nairobi; Ivyland Park Ltd (Interested Party) Ex parte Inderpal Singh & 2 others Suing as Officials of Convent Drive South Residents’ Association* [2021] eKLR, the court held as follows: -

“ ... It is an established position of law that the only reason that 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 with retainer...”

15. In addition, Rule 7 of the *Advocates Remuneration Order* provides for interest on the said costs at 14 % until payment in full. However, it is important to point out that 14% runs from the time the bill is delivered. Not from the time the certificate of taxation is issued. It is not in dispute that the Bill of Costs dated 4.4.2022 was delivered to the Respondents on the same day. In terms of Rule 7, it started attracting 14% interest from 4.5.2022 being thirty (30) days after the delivery of the Bill.

16. The Respondents though signing documents in person have always been represented by Counsel and therefore, I have no hesitation to hold that the amount attracted 14% interest as from 4.5.2022. Lastly, from the Respondents’ submissions, one of the objections raised is that there was no compliance with section 48 of the *Advocates Act*.

17. In the case of *M G Sharma v Uhuru Highway Development Limited* [2001] eKLR, the Court of Appeal clearly explained the applicability of section 48 of the *Act* in matters recovery of costs.

18. Once an advocate approaches court by way of a miscellaneous application for purposes of recovering his or her costs, the rigors of section 48 of the *Advocates Act* are avoided and I thus find the Respondents’ arguments on this limb not merited.

19. I think I have said enough to show that the application dated 28<sup>th</sup> August, 2024 has merits and the same is for allowing.

20. On costs, it is settled that the same follows the event. However, the court retains discretion whether to grant them or not. Furthermore, this discretion must be exercised judiciously and courts should not deprive a plaintiff/defendant of his or her costs unless it can be shown that they acted unreasonably. The *Halsbury’s Laws of England*, 4th Edition (Re-issue), [2010], Vol.10. para 16, notes as follows: -

“ The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must



be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice”

21. The Applicant has been made to defend and prosecute one application after another and I see no reason to deny him costs. In the circumstances, I award costs to the Applicant.
  22. Having found the application successful, the following orders flow therefrom:
    - a. The Notice of Motion dated 28<sup>th</sup> August, 2024 has merit and the same is allowed in the following terms:
      - i. Judgement in entered in favour of the Advocate/Applicant against the Clients/ Respondents in the sum of Kshs. 441,145/= as appears in the Certificate of Taxation dated 17.7.2024
      - ii. The sum in (i) above shall attract interest at the rate of 14% per annum from 4.5.2022 until payment in full
    - b. Costs to the Applicant
- Orders accordingly.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 29<sup>TH</sup> DAY OF MAY, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of:

Mr. Miyare Advocate for the Applicant

Mr. Aziz p.i.p for the Respondents

Ms. Norah, Court Assistant

