



Tom Ojienda & Associates v County Government of Tana River (Miscellaneous Civil Application E004 of 2025) [2025] KEHC 11499 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
MISCELLANEOUS CIVIL APPLICATION E004 OF 2025**

**JN NJAGI, J
JULY 31, 2025**

BETWEEN

PROF. TOM OJIENDA & ASSOCIATES APPLICANT

AND

COUNTY GOVERNMENT OF TANA RIVER RESPONDENT

RULING

1. By a Notice of Motion application dated 15th May, 2025 brought under Section 51 (2) of the Advocates Act and Rule 7 of the Advocates Remuneration Order, the Applicant seek: -
 1. That the Honourable Court be pleased to enter judgment for the Applicant against the Respondent for the sum of Kshs.10,606,083/- as appears on the Certificate of Taxation dated 15th May 2025.
 2. That this Honourable Court be pleased to grant interest on the said sum of Kshs. 10,606,083/- to run from one month of service of the Bill of Costs on the Respondent, that is from 1st March, 2025 until payment in full.
 3. That the costs of the application be provided for.
2. The application is supported by grounds on the face of the application and the affidavit sworn by Prof. Tom Ojienda on even date. He deposed that the Applicant herein filed an Advocate- Client Bill of Costs dated 17th January, 2025 which was served on the Respondent on 30th January, 2025. That the Respondent failed to pay the Applicant legal fees for its representation in the matter thereby necessitating the Advocate-Client Bill of Costs which was taxed at a sum of Kshs. 10,606,083/- vide a Ruling dated 30th April, 2025. That the Certificate of Taxation has neither been set aside nor altered and as such there is no reason why judgment should not be entered against the Respondent for the amount sought.



Submissions

3. The Applicant filed submissions dated 29th May, 2025 through the firm of Prof. Tom Ojienda & Associates. Counsel submitted that the application is supported by Section 51 (2) of the *Advocates Act*, Cap 16 which provision provides as follows;

“The Certificate of 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 case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs”

4. Counsel also relied on the case of *A.M. Kimani & Company Advocates vs Kenindia Assurance Company Limited* (2006) eKLR where the court opined that where the certificate of taxation has not been set aside or altered, and where there is no order of stay, the certificate is final as to the amount of costs. He submitted that the instant application seeks to have this Honourable Court convert the said Certificate of Taxation as judgment of the court together with interest.

5. As regards interest, counsel placed reliance on the case of *Makhecha and Company Advocates vs Central Bank of Kenya* (2020) eKLR where the court held that:

Rule 7 of the Advocates Remuneration Order enables an advocate to charge interest above the normal or applicable rate of twelve (12%) percent provided that the claim for interest was raised before payment or settlement of the advocate’s bill of costs.

6. Counsel further submitted that the applicant is entitled to interest from 1st March, 2025 being one month from date of service of the Bill of Costs till payment in full. That interest is being sought before payment or settlement of the costs due and owing to the Applicant as the Respondent has not made any attempts towards settlement of the taxed amount.

Disposition

7. I have considered the application, the affidavit in support and the submissions filed by counsel for the applicant. The application before this court is for the adoption of the Certificate of Costs herein as a judgment of the Court and to determine whether this court ought to grant interest on the taxed sum to run from one month of service of the Bill of Costs on the Respondent.
8. The Respondent did not participate in this application. It is evident from the pleadings that the Certificate of Costs that was issued by the Taxing Officer has not been set aside and/or altered. Indeed, there is no reference under Paragraph 11 of the Advocates Remuneration Order challenging the decision of the said Taxing Master.
9. Section 51(2) of the *Advocates Act*, provides for the finality of the Certificate of the Taxing officer unless the same has been set aside or altered by the court. The court has power under paragraph 11 of the Advocates Remuneration to allow a party objecting to the decision of the taxing master to file a reference in the High Court seeking to set aside the taxed bill and refer the bill back for re-taxing, among other orders. In view of the fact that the Respondent has not challenged the taxed bill through a reference, the applicants have rightly moved this court for the adoption of the Certificate of Taxation as a judgment of this court.
10. The second issue is for the court to determine whether it ought to grant interest on the taxed sum to run from one month of service of the Bill of Costs on the Respondent.



11. The applicant contends that he is entitled to interest on the taxed sum from one month after service of the Bill of Costs on the Respondent. He relied on Section 7 of the Advocates Remuneration Order which provides that:

An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or rendered in full.

12. He further cited the decision in the case of Makhecha and Company Advocates vs Central Bank of Kenya (2020) eKLR where the court reiterated that the provisions of Rule 7 of the Advocates Remuneration Order entitles an advocate to charge interest above the normal or applicable rate of twelve (12%) per cent provided that the claim for interest was raised before payment or settlement of the advocate's bill of costs.
13. In view of the express provisions of Rule 7 of the Advocates Remuneration Order, I find the claim on interest to be well founded in law. The same has been raised before settlement of the advocate's bill of costs. The application to charge interest on the awarded sum at the rate of 14% per annum is thereby allowed.
14. Consequently, I find the application herein to be merited. Judgment is thereby entered for the Applicant as prayed in prayers 1 and 2 of the Notice of Motion dated 15th May 2025, with interest at the rate of 14% per annum from 1st March 2025 till payment in full.

The Applicant to have the costs of the application.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 31ST DAY OF JULY 2025

J.N. NJAGI

JUDGE

In the presence of:

Miss Msando h/b for Prof.Ojienda for Applicant

Mr. Barack h/b for Mr. Allan for Respondent

Court Assistant – J. Kambi

