

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC APPLICATION NO E055 OF 2023

WEKESA & SIMIYU

ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

EAST AFRICAN PORTLAND CEMENT

COMPANY LIMITED.....

.....RESPONDENT

**IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 LAWS OF
KENYA**

AND

**IN THE MATTER OF AN ADVOCATE/CLIENT ITEMIZED BILL OF COSTS
ARISING FROM LEGAL REPRESENTATION IN *High Court of Kenya at
Eldoret Civil Appeal No 132 of 2018, AG & East African Portland
Cement Co. Limited Vs Kaakima Daniel Kiptoo***

Coram: Before Justice R. Nyakundi

M/s Wekesa & Simiyu Advocates

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 10th July 2024 premised under Article 159(2) of the Constitution of Kenya 2010, sections 1A, 1B and 3A of the Civil Procedure Act, section 51(2) of the Advocates Act, Paragraph 7 of the Advocates Remuneration Order, Order 51 rule 1 of the Civil Procedure Rules in which the Applicant is seeking the following orders;
 - a. That Judgement be entered in favour of the Advocate/Applicant as against the Client/Respondent for the sum of Kshs. 662,011.00 with interest at 14% per annum from 11th March 2023, being 30 days

- from the delivery of the Advocate/Client bill of costs to the Client/Respondent, until payment in full.
- b. That the costs of this Notice of Motion be borne by the Client/Respondent and be assessed and set by this Honorable Court.
2. The Application is based on the grounds on the face of it among others;
- a. The taxing officer by Ruling made on 14th November 2023 taxed the Advocate/Client Bill of Costs of the Advocate/Applicant dated 3rd April 2023 at a sum of kshs. 662,011.00
 - b. There was no reference filed by the Client/Respondent to challenge the ruling of the Taxing Officer of 14th November 2023 within 14 days prescribed by the law and the Client/Respondent lost its right of appeal against the ruling.
 - c. The Advocate/Applicant was issued with a Certificate of taxation of costs dated 23rd January 2024, certifying his legal fees due from the Client/Respondent as Kshs. 662,011.00
 - d. The Certificate of Taxation of costs dated 23rd January 2024 aforesaid has not been varied or set aside through any order of this Honourable Court.
 - e. The Advocate/Applicant states that prior to filing their Advocate/Client Bill of Costs, the subject of the ruling of the Taxing Officer of 14th November 2023 and the Certificate of Taxation therefrom, delivered the full itemized Bill of Costs to the Client/Respondent on 9th February 2023 demanding payment of its legal fees within thirty days from the demand for settlement thereof, as by law required under paragraph 7 of the Advocates (Remuneration) Order. The Client/Respondent neglected, refused and failed to pay the legal fees demanded.
 - f. The Advocate/Applicant is entitled to charge interest at 14% per annum as from 11th March 2023, being one month from the delivery of the bill to the client and pursuant to paragraph 7 of the Advocates (Remuneration) Order, 2009 given that it delivered the

- itemized bill of costs to the Client/Respondent on 9th February, 2023 before filing it in court on 6th April 2023.
- g. The services rendered by the Advocate/Applicant stretch back to over six years ago and the Client/Respondent ought to meet its part of the bargain and pay for its services it benefited from the Advocate/Client.
 - h. The reality of inflation impels that the Advocate/Applicant ought to be cushioned on the value of its legal fees by a charge of interest as provided by the law.
 - i. The Advocates Remuneration Order 2009 provides for the charging of interest by an advocate for his costs at 14% per annum and this is an appropriate case for interest to be entered as from 11th March 2023 being 30 days from delivery of the Advocate/Client bill of costs to the Client/Respondent until payment in full.
 - j. The Client/Respondent is obliged by the dictates of law to pay for services rendered under the national values and principles of governance at Article 10 of the Constitution of Kenya 2010.
 - k. It is in the interest of just and in accordance with the overriding objective of law that this application be allowed with costs to the Advocate/Applicant, and judgement for kshs. 662,011.00 be entered for the Advocate/Applicant with interest at 14% per annum from 11th March 2023, until payment in full.
3. The Application is supported by the annexed affidavit dated 10th July 2024 sworn by the Advocate/Applicant who avers as follows;
- 1) *That the Advocate/Applicant duly instructed by the Client/Respondent in defending the Client/Respondent in High Court of Kenya at Eldoret Civil Appeal No 132 of 2018, AG & East African Portland Cement Co. Limited Vs Kaakima Daniel Kiptoo seeking to set aside the judgement of the Chief Magistrate as delivered on 21.09.2018 in CMCC No. 202 of 2016- Kaakima Daniel Kiptoo Vs AG & East African Portland Cement Company Limited*

where the Court ordered and decreed that the Client/Respondent do pay the Plaintiff therein damages for malicious prosecution at kshs. 2,000,000 with interest on court rates plus costs.

- 2) That the Advocate/Applicant carried out the diverse assignments for the Client/Respondent accordingly and successfully.*
- 3) That the Advocate/Client further rendered a Final Fee Note dated 11th December 2023 seeking the sum of kshs. 822,625.00 as their legal fees for professional services rendered and disbursements for outgoings incurred in acting for the Client/Respondent and which was delivered on 11th December, 2023 via email to the legal officer, East African Portland Cement Co. Limited as at then, Madam Roseline Ominde.*
- 4) The Advocate/Applicant served the Client/Respondent with an itemized Advocate/Client Bill of costs dated 9th February 2023 seeking payment in the sum of Kshs. 848,265.00 as drawn and a letter dated 9th February 2023 seeking settlement of the said amount within 30 days which the Client/Respondent ignored, neglected and/or refused to act on.*
- 5) That the Client/Respondent ignored, neglected and/or refused to act the Fee Note to pay the legal fees thereby compelling the Advocate/Applicant to file the Advocate/Client Bill of Costs Misc. Application No. E55 of 2023 and the same was served upon the Client/Respondent who defended the taxation completely.*
- 6) That the taxing officer after hearing the parties did on 14th November 2023 render a Ruling on the Taxation of the Advocate/Client Bill of costs dated 3rd April 2023 and taxed the same in the sum of Kshs. 662,011.00*
- 7) That the Advocate/Applicant applied for and was issued with a Certificate of Taxation dated 23rd January 2024 for the sum of Kshs. 662,011.00*

- 8) *That the Advocate/Applicant served the Certificate of Taxation dated 24th January 2024 together with a demand notice dated 25th January 2024 seeking payment for the taxed sum of kshs. 662,011.00 and further notifying the Client/Respondent if the payment is not received within ten 10 days as from the date of the demand notice, the Advocate/Applicant shall initiate appropriate recovery proceedings.*
 - 9) *That up-to date, the Client/Respondent ignored, neglected and/or refused to act on the demand notice dated 25th January 2024 hence filing of this application.*
 - 10) *That the Client/Respondent has not and has never disputed the retainer to the Advocate/Applicant the subject of this case.*
 - 11) *That the Certificate of Taxation has not been varied or set aside by any competent Court.*
4. The Application is unopposed as the Respondent has neither entered appearance nor filed a response despite service.
 5. The Application was canvassed by way of written submissions.

Applicant's Written Submissions

6. The Applicant filed its written submissions dated 11th July 2024 in which 3 issues were listed for determination as follows;
 - a. Whether judgment should be entered based on the Certificate of Costs
 - b. Whether the Advocate/Applicant is entitled to interest at 14% p.a. from the date of filing the bill of costs in Court on 28th September 2021 until payment in full.
 - c. Whether the Advocate/Applicant is entitled to the costs of the current application
7. On the issue of whether judgment ought to be entered on the Certificate of Costs, it was submitted that the Advocate/Applicant was entitled to judgment in the sum of Kshs. 662,011.00, being the amount certified in the Certificate of Taxation dated 24th January 2024, pursuant to the ruling

of the taxing officer on 14th November 2023. The Certificate had not been set aside, varied, or challenged, and the retainer between the Advocate and Client was not disputed.

8. It was further submitted that Section 51(2) of the Advocates Act grants the court power to enter judgment based on a certificate of costs, provided the conditions therein are satisfied, namely: the certificate is not set aside or altered and that the retainer is not disputed. To support this position, several authorities were cited, including:

- a) *Peter Odiwuor Ngoge v Washington Jalango Olumu [2012] eKLR*, where the Court of Appeal held that once taxation has been concluded and retainer is undisputed, judgment can be entered.
- b) *Nzei & Co. Advocates v Davis Mutiso Nthenge [2016] eKLR*, affirming that the court can enter judgment where there is no reference challenging taxation.
- c) *Gitau & Kaburu Advocates LLP v African Merchant Assurance Co. Ltd [2019] eKLR*, where the certificate had not been appealed, and the court granted judgment.
- d) *Lubulellah & Associates Advocates v N.K. Brothers Ltd [2014] eKLR*, stating that a fresh suit is not required where the Certificate of Taxation is uncontested.
- e) *Musyoka & Wambua Advocates v Rustam Hira [2006] eKLR*, confirming that filing a suit is unnecessary where retainer is undisputed and certificate is intact.

9. It was concluded that judgment should be entered summarily as all statutory and judicial conditions had been satisfied.

10. On the issue of whether the Advocate/Applicant is entitled to interest at 14% Per Annum, it was submitted that the Advocate/Applicant was entitled to interest at 14% per annum from 11th March 2023 (30 days after service of the bill on 9th February 2023), based on: Section 26(1) of the Civil Procedure Act, which gives the court discretion to award interest from the date of suit to the date of payment and paragraph 7 of the

Advocates (Remuneration) Order, 2009, which permits an advocate to charge interest at 14% per annum on unpaid fees, starting one month after delivery of the bill.

11. It was further submitted that the claim for interest was made before full payment, satisfying the legal requirement. The delay in payment had caused financial strain, and the interest would cushion the Advocate against inflation and depreciation of legal fees over time. Reference was made to *Lubulellah & Associates Advocates v N.K. Brothers Ltd [2014] eKLR*, where the court confirmed its power to award interest at court rates under Section 51(2). The Court's discretion to award interest as long as the claim is made properly and in compliance with the Remuneration Order.
12. It was concluded that the court ought to exercise its discretion and award interest at 14% per annum from 11th March 2023 until payment in full.
13. On the issue of whether the Advocate/Applicant is entitled to the costs of the Application, it was submitted that the Advocate/Applicant is entitled to costs associated with filing and prosecuting the current Notice of Motion, as governed by the Advocates (Remuneration) Order, specifically Schedule 6 and Paragraphs 1(viii), 4(a), and 17(1). The breakdown of claimed costs was:
 - a. Kshs. 30,000.00 – instruction fees, considering the value of the matter and prolonged delay by the Client.
 - b. Kshs. 9,500.00 – for drawing the application and submissions (approximately 60 folios at Kshs. 150 per folio).
 - c. Kshs. 4,600.00 – for two attendances in court at Kshs. 2,300.00 per appearance.
 - d. Total claimed costs: Kshs. 44,100.00
14. To avoid the need for further taxation of this application's costs, the Court was urged to assess the costs summarily, citing: *Ngati & 3 others v Embakasi Village Craft Curios & Jua Kali Association & 7 others [2023]*

KLR, where the court assessed and awarded costs at Kshs. 45,000 to prevent time-wasting through another bill.

15. It was concluded that it would be fair, efficient, and judicially economical for the court to award the costs as submitted, rather than require further taxation proceedings. It was submitted that the Advocate/Applicant has met all the legal requirements and precedents for the orders sought, and therefore the Applicant/Advocate urged the court to: enter judgment for Kshs. 662,011.00; award interest at 14% p.a. from 11th March 2023 until payment in full and award costs of Kshs. 44,100.00 or any reasonable amount the court may deem just.

Analysis and Determination

16. I have read and considered the Notice of Motion Application, the Affidavit in support and the submissions in support of the Application. There are two (2) issues for determination as follows: Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs. 662,011.00; Whether the applicant should be awarded interests on the taxed costs

Whether the application is merited for the court to adopt the Certificate of Taxation and enter judgment in the sum of Kshs. 662,011.00

17. I take note that the Applicant has annexed a Certificate of Taxation dated 23rd January 2024, confirming that the Advocate/Client Bill of Costs was taxed at Kshs. 662,011.00. The Respondent has not filed any reference to challenge the ruling of the taxing officer delivered on 14th November 2023, nor has the Certificate of Taxation been varied or set aside.
18. The crux of this issue requires me to delve in section 51(2) of the Advocates Act. In particular, this section provides as follows;

“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 recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum certified to be due with costs.”

19. From the above provision, it is therefore clear that the advocate would have the right to request entry of judgment on the tax certificate in cases where the certificate has not been set aside, retainer disputes are resolved, and the respondent has not filed any pending references. Thus, in order for the application at hand to succeed or to be meritorious the Court needs to be satisfied that the Certificate of Taxation has not been set aside while determining whether to adopt the amount on the Certificate of Taxation. With this I am guided by the decision in the case of **Lubulellah & Associates Advocates Vs N. K. Brothers Limited (2014) eKLR** where the court observed that:

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of Costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”

20. From this instant case and looking at the face of the record, no reference has been filed challenging the certificate of taxation which is sought to be adopted as judgment on costs and no issue has been raised as to retainer. This court is therefore satisfied that the Certificate of Taxation dated 23rd January 2024 is uncontested.

21. In view of the discussed legal principles above, I hereby enter judgment for the Applicant/Advocate on the taxed costs of Kshs. 662,011.00 as per the certificate of taxation dated 23rd January 2024.

Whether the applicant should be awarded interests on the taxed costs

22. This issue requires a reference to Rule 7 of the Advocates Remuneration Order which provides as follows: *“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.”*

23. According to the aforementioned rule, a claim for interest must be made in order for it to begin to accrue one month after the client receives the bill. I wish to refer to the case of **Kerongo & Company Advocates Vs Africa Assurance Merchant Co. Limited [2019] eKLR** where 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.”

24. Further to the above, the interpretation of Rule 7 of the Advocates Remuneration Order was also stated as follows by Mabeya J in **Kithi & Company Advocates vs. Menengai Downs Limited [2015] eKLR**, persuasively:

“I will start with interest. There seems to be a misconception by legal practitioners on the award of interest on taxed costs. An Advocate is entitled to interest on the amount taxed on an Advocate/client Bill of

Costs. The rate of interest awardable is 14% per Annum applicable from 30 days after the date of service of either the Block Fee Note or the Bills of Costs. This is clearly set out in Rule 7 of the Advocates Remuneration Order which provides.”

25. Given the aforementioned, the decretal amount is subject to interest at the rate of 14% annually starting 30 days after the bill is served, rather than on the date of taxation, once a judgment is entered on a certificate of costs. Evidence of the date the bill was served to the client must be on file in order for an advocate to be able to retrieve this. In **Jackson Omwenga & Co. Advocates vs. Everest Enterprises Ltd [2017]**, L. Njuguna J, remarked as follows:

“I have perused the Advocates Remuneration (Amendment) Order, Rule 7. Under the said rule, an advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full. To comply with that provision, the applicant must prove two things:

- (a) That one month has expired from the time he delivered his bill to the client;*
- (b) He has raised his ‘claim’ for interest before the amount of the bill has been paid or tendered in full.”*

26. In the case of **D. Njogu & Company Advocates vs Kenya National Capital Corporation [2006] eKLR**, the court held that *interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation*. The court therein explained that the “correct fee note” meant a bill that was in accordance with the terms upon which the advocate had contracted with the client or the bill which the client did not dispute or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.

27. Moreover, in **Prof Tom Ojienda & Associates Vs County Government of Nairobi (Judicial Review Miscellaneous Application E027 of 2020) [2025]**, the court observed thus:

“20. Under the cited Rule 7 of the Advocates Remuneration Order, to lawfully claim the 14% interest, or any part thereof, on the taxed bill of costs, the advocate must:

- a. Serve the itemized bill of costs to the client,*
- b. Explicitly include a demand for interest at 14% in the bill, and*
- c. Wait for 30 days to lapse after service before interest begins to accrue.*

21. If the advocate fails to include the interest demand in the bill, then:

- a. The Taxing Officer lacks jurisdiction to award that interest during taxation; and*
- b. The Court cannot include interest in the certificate of taxation or any resulting judgment adopting the certify cate of costs.”*

28. The Applicant has demonstrated that an itemized Bill of Costs was delivered on 9th February 2023, and that interest began accruing 30 days later, on 11th March 2023, as stipulated. The claim for interest was made before payment, and the Respondent has failed to settle or respond to the demand. The Applicant also relies on Section 26(1) of the Civil Procedure Act, which grants discretion to the court to award interest.

29. In view of the foregoing, the application herein is merited and the same is allowed in the following terms: -

- a) That Judgement be and is hereby entered in favour of the Advocate/Applicant as against the Client/Respondent for the sum of Kshs. 662,011.00 2with interest at 14% per annum from today’s Ruling being 28th July 2025, until payment in full.
- b) The costs of this application be awarded to the Advocate/Applicant at Kshs. 5,000/=

30. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET
THIS 11TH AUGUST 2025**

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**R. NYAKUNDI
JUDGE**