



**Nduati & Company Advocates v Kenya Orient Insurance Co. Ltd (Civil Miscellaneous Application E002 of 2021) [2024] KEHC 9889 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9889 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL MISCELLANEOUS APPLICATION E002 OF 2021  
DKN MAGARE, J  
JULY 29, 2024**

**BETWEEN**

**NDUATI & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**KENYA ORIENT INSURANCE CO. LTD ..... RESPONDENT**

**RULING**

1. This is a ruling over a Miscellaneous Application dated 24/11/2022 which sought that judgment be entered for the Applicant against the Respondent in the sum of Kshs. 139,851.90/= being the sum taxed and certified by the Deputy Registrar on 15/12/2020 as due to the Applicant with interest thereon.
2. The application arose from the Advocate/Client bill of costs dated 15/12/2020, which was taxed at a sum of Kshs. 139,851.90/=. The application is expressed to be brought under Section 51(1) of the *Advocates Act*. The said Section 51(2) of the *Advocates Act* provides thus:

Pursuant to the provisions of Section 2 of the *Advocates Act* -

“Client’ includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ an advocate and any person who is or may be liable to pay an advocate any costs.”
3. The case arose from a taxation of advocate client bill of costs under Rule 11 of the Advocates Remuneration Order. Before adopting the judgment, I must be assured of the propriety of the judgment. It is not in relation to the taxation but whether it is a proper amount to enter judgment. in



In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

4. In order to avoid the entire bill being struck out, I shall cull out the illegal instruction fees and its attendant ½ thereof and 16% VAT. This totals up to Ks 97,895/=. This amount is struck out from the certificate of taxation in view of the express provisions of Rule 11(3). This leaves Ksh. 41,976.90/=.
5. The Deputy Registrar is accordingly to issue an amended certificate of costs. The said certificate does not appear to have been filed except with the impugned application.
6. Therefore I enter judgment for the sum of Kshs. 41,976.90/=. It shall attract interest from 30/4/2021 being 30 days from the date of service.
7. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate (2006)* eKLR it was held: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit...”
8. I allow the Application to the extent indicated.

#### **Determination**

9. I therefore make the following orders: -
  - a. I strike out instruction fees together with its attendant increase by half and 16% VAT thereon pursuant to rule 11 of the advocates remuneration order. The Certificate of Costs is amended accordingly.
  - b. Judgment be and is hereby entered for the Applicant against the Respondent for Ksh. 41,976.90/= with interest from 30/4/2021.
  - c. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 29<sup>TH</sup> DAY OF JULY, 2024 RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

No appearance for parties

Court clerk – Jedidah

