



**Gakuo & another v Mwaura & 3 others (Civil Appeal
199 of 2017) [2024] KEHC 10015 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 199 OF 2017**

**A MSHILA, J
JULY 26, 2024**

BETWEEN

**TERESIAH WANGUI GAKUO & ANOTHER & ANOTHER & ANOTHER &
ANOTHER APPLICANT**

AND

**REGINA WANGUI MWAURA & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3
OTHERS RESPONDENT**

RULING

Background

1. The Application is a Notice of Motion dated 12th September, 2023 brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law; the Applicant seeks for orders that;
 - a. The Certificate of Costs issued to the Appellants as against the Respondent be converted into a Judgment of this Court and judgment be entered in favour of the Appellant for the sum of Kshs.99,045/-
 - b. Interest on the sum of Kshs.99,045/- at the rate of 14%;
 - c. Costs of this Application be borne by the Respondent.
2. The Application was premised on the grounds on the face of the application and supported by the sworn Affidavit of Moses Muchiri Kahoro who stated that the Party and Party Bill of Costs dated 17th February, 2022 and 22nd February, 2022 was taxed and allowed against the Respondents in the sum of Kshs.99,045/- and a Certificate of Taxation issued 30th August, 2022.



3. The decision of the Taxing Officer delivered has not been reviewed and/or set aside. The Respondent has not objected to the taxation, neither did it file a reference against the Certificate of Taxation and have not settled the amount thereof.

Issues for Determination

4. After considering the Application the court has framed the following issues for determination:
 - a. Whether judgment should be entered for the Applicant against the Respondent as per Certificate of Taxation herein issued on 30th August, 2022.
 - b. Whether interest is applicable thereon;

Analysis

Whether judgment should be entered for the Applicant against the Respondent as per Certificate of Taxation herein dated 30th August, 2022;

5. In determining whether the court should adopt the amount on the Certificate of Taxation as the judgment of the court it should be satisfied that the certificate of taxation has not been set aside.
6. Reference is made to 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.”

7. From perusal of the court record this court is satisfied that the Ruling is uncontested as the Respondent has not moved any court by way of filing a Reference against the ruling nor has the Ruling been set aside, altered, varied and / or reviewed, nor has any appeal been filed.
8. Therefore, no other action is required from this court save to enter judgment as prayed against the Respondent.

Whether interest is applicable thereon and payable

9. The Applicant seeks the court to grant interest thereon at 14% per annum until payment in full. The claim for interest must be raised for it to start to accrue. After careful perusal of the court record nowhere is there a claim for interest raised in the letter dated 14th September, 2022 nor is there any averments or evidence to support the sending of any Demand Letter to the Respondent by the Applicant.
10. The Applicant is found to have failed to furnish proof that it had raised the claim for interest with the Respondent; the prayer for interest to start accruing on the costs is found to be devoid of merit and is therefore disallowed.



Findings and Determination

11. In the light of the foregoing this court makes the following findings and determinations;
- i. The Application dated 12th September, 2023 is found to be partially meritorious;
 - ii. The Certificate of Taxation issued on 30th August, 2022 in the sum of Kshs.99, 045/- is hereby adopted as a Judgment of this Court.
 - iii. There shall be no order as to interest.
 - iv. Each party to bear their own costs of this application.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 26th DAY OF JULY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Muchiri - For the Applicant

N/A – for the Respondent

