



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Mwendwa Mwinzi & Associates Advocate v Mutie (Environment and Land Miscellaneous Application 2 of 2020) [2023] KEELC 16592 (KLR) (22 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16592 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2020
TW MURIGI, J
MARCH 22, 2023
IN THE MATTER OF THE ADVOCATES RENUMERATION AMENDMENT ORDER, 2014
AND
IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA
BETWEEN
MWENDWA MWINZI & ASSOCIATES ADVOCATE APPLICANT
AND
STEPHEN MUTIE RESPONDENT

RULING

1. By a Notice of Motion dated August 24, 2022 brought pursuant to the provisions of Article 159 of the Constitution, Sections 45(1) and 51(2) of the Advocates Act Cap16 Laws of Kenya, Section 3 of the Environment and Land Court Act, Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya and Order 51 of the Civil Procedure Rules, the Applicant seeks the following orders:-
 1. That judgment be entered for the Applicant in the sum of Kenya Shillings Three Hundred and Thirty Three Thousand, Eight Hundred and Fifteen (Kshs. 333,815/-) being the taxed costs plus interest at Court rates from the date of the Certificate of Taxation till payment in full.
 2. That this Honourable Court do grant any further orders it may deem fit to grant.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of the Applicant sworn on even date.

The Applicant's Case

3. The Applicant averred that the Respondent instructed him to act for him in Makueni ELC Case No 198 of 2017 formerly Machakos ELC Suit No 100 of 2015.



4. That after the cessation of the Advocate-Client relationship between the Applicant and the Respondent, the Applicant filed an Advocate Client Bill of costs which was taxed and allowed in the sum of Kshs 333,815/-.
5. The Applicant urged the Court to allow the application since no reference has been filed against the Certificate of Costs.
6. The Respondent did not file a response to the application though he was duly served.

Analysis And Determination

7. The Applicant is seeking for judgment to be entered in the sum of Kshs 333,815/- being the taxed costs plus interest at the Court rates from the date of certificate of Taxation till payment in full. It is not in dispute that the Applicant filed his bill of costs on 11th of March, 2020.
8. The Respondent did not participate in the said hearing nor defend the bill of costs. The Deputy registrar taxed the bill of costs at Kshs. 333,815/- and the Applicant served the same upon the Respondent.
9. Section 51(2) of the *Advocates Act* provides that;

“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.”
10. Having regard to the above provision it is clear that the only instances where a Court may not enter judgment on a Certificate of Costs is where the Certificate has been set aside, varied and/or altered or the retainer is disputed.
11. In the case of *Republic -vs- City Council of Nairobi Ivyland Park Ltd (Interested Party) Ex-parte Inderpal Singh & 2 others* (2021) eKLR the Court stated as follows:-

“It is an established position of law that the only reason 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 of retainer 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. The Respondent has not contested the Certificate of Costs. The Court therefore finds no reason why Judgment should not be entered as per the Certificate of Costs dated June 16, 2021.
13. The upshot of the foregoing is that the application dated August 24, 2022 is merited and I proceed to allow the same in the following terms:-
 1. Judgment is entered for the Applicant against the Respondent for the taxed costs of Kshs. 333,815/- with interest at 14 % per annum from June 16, 2021 until payment in full.
 2. I make no order for costs in regard to the Notice of Motion dated August 24, 2022.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF MARCH, 2023.

HON. T. MURIGI



JUDGEIN THE PRESENCE OF: -

Court Assistant – Mr. Kwemboi

Mwinzi for the Applicant.

