



**Mwadumbo & Company Advocates v Kimani t/a Arprim Obsultants (Miscellaneous Application 201 of 2017) [2024] KEHC 14769 (KLR) (Commercial and Tax) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14769 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 201 OF 2017**

**A MABEYA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**MWADUMBO & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**JOSEPH MAINA KIMANI T/A ARPRIM OBSULTANTS ..... RESPONDENT**

**RULING**

1. Before Court is the application dated 26/7/2023. It is brought under section 51(2) of the *Advocates Act* CAP 16 Laws of Kenya, Order 36 and Order 52 rule 6 of the Civil Procedure rules 2010. It seeks judgment for the applicant against the respondent in the sum of Kshs 1,036,937/= in terms of the certificate of taxation issued on 26/7/2022 together with interest at court rate from 12/7/2021.
2. The application was supported by the affidavit of A.n. Munga-mwadumbo sworn on 26/7/2023. The applicant stated that the bill of costs dated 26/4/2017 was taxed between advocate and client at Kshs 1,036,937/=. A certificate of taxation was issued on 26/7/2022. Despite several reminders, the client has failed to settle the costs. The respondent subsequently filed a reference, which was dismissed in a ruling dated 7/6/2022.
3. The application was contested through a replying affidavit dated 25/10/2023, sworn by Joseph Maina Kimani. He stated that the respondent, dissatisfied with the ruling on the reference, intends to appeal to the Court of Appeal and has already filed a notice of appeal. The respondent is currently awaiting certified copies of the ruling and the proceedings in order to file a memorandum of appeal. He contended that the amount awarded was excessive and exorbitant and therefore, the application should be dismissed.
4. Parties canvassed the application by way of written submissions which have been duly considered.



5. The applicant submitted that the Certificate of taxation issued on 26/7/2022 had neither been set aside nor altered. That the reference filed by the respondent was dismissed on 7/6/2022 and the respondent only filed a notice of appeal and not the substantive appeal. That the respondent had made an allegation that it had made a deposit however the same is not substantiated by evidence. On the issue of interest, Counsel submitted that interest should be awarded at court rate from 12/7/2021 being the date the bill of costs was taxed.
6. The respondent submitted that since he had preferred an appeal to the court of appeal, the status quo should be maintained pending the appeal. It was submitted that allowing the orders sought would occasion the respondent substantial loss and render the appeal nugatory. It was the respondent's position that the current application should be dismissed to give room for the appeal.
7. I have considered the parties' contestations in the pleadings and submissions. The question before Court is whether judgment should be entered against the respondent as per the certificate of taxation.
8. Section 51(2) of the Advocates Act mandates this court to enter judgment for costs recoverable. It provides: -

“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 thereby; and the court may make such order 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.”
9. In *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR the Court stated as follows: -

“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.”
10. In the present case, the bill of costs dated 26/4/2017 was taxed on 12/7/2021 at Kshs 1,036,937/=. A Certificate of taxation was issued on 26/7/2022. It is undisputed that the taxing master's decision has not been set aside or altered. The respondent's reference was dismissed.
11. The threshold for allowing judgment on a Certificate of taxation is that it should remain unaltered. Since the reference was dismissed, there is nothing preventing the Court from entering judgment for the costs. Furthermore, there are no orders staying the ruling on the reference and the Certificate of taxation remains valid. Judgment should follow as a matter of course.
12. The applicant has also sought interest at court rate from 12/7/2021. Rule 7 of the Advocates Remuneration Order which states as hereunder-

“An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.



13. The foregoing rule clearly stipulates that such claim for interest is limited to costs and disbursements and the Court finds that it is a proper case for awarding interest at 14% from the date the bill was taxed.
14. Accordingly, I find merit in the application and the same is allowed in the following terms;
- a. Judgment be and is hereby entered in favour of the applicant/advocate in the sum of Kshs. 1,036,937/= against the client in terms of the Certificate of taxation dated 26/7/2022
  - b. That the client do pay the advocate interest on the said amount at the rate of 14% per annum from 12/7/2021 until payment in full.
  - c. Parties shall bear their own costs.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> NOVEMBER 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

