



Ogejo Omboto & Kijala, Advocates, LLP v United Millers Limited (Miscellaneous Application E040 of 2023) [2024] KEHC 14846 (KLR) (27 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14846 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS APPLICATION E040 OF 2023
WM MUSYOKA, J
NOVEMBER 27, 2024**

BETWEEN

OGEJO OMBOTO & KIJALA, ADVOCATES, LLP APPLICANT

AND

UNITED MILLERS LIMITED RESPONDENT

RULING

1. What I am called upon to determine is a Motion, dated 11th July 2024. It seeks adoption of a certificate of costs, issued on 8th July 2024, arising from taxation of the bill of costs, dated 31st July 2023, in the sum of Kshs. 572,185.51, be made a judgment and decree of this court. It further seeks that the said amount be subjected to interest, at the rate of 14% per annum, from 2nd November 2023, until payment in full.
2. The applicant avers that it had been retained by the respondent, to defend it in Busia CMCCC No. 171 of 2018, and represented the respondent in those proceedings until logical conclusion. It avers that, as a result, the applicant became entitled to professional fees. An Advocate-client fee note was presented to the respondent, but it was not settled, leading up to the taxation of the Advocate/client bill, and issuance of the certificate. The interest is sought from the date when the bill for taxation was served.
3. Some documents are annexed. There is a certificate of costs, dated 8th July 2024, for Kshs. 572,185.51. There is a taxation notice, dated 29th September 2023, which has a stamp embossed, of the respondent, bearing a date of receipt of 2nd October 2023, at 3.27 PM. There is also a copy of the Advocate/client bill of costs itself, dated 31st July 2023, which also bears a date stamp of the respondent, with 2nd October 2023, as the date when the same was received.
4. The application was served. The respondent has reacted to it, through Richard Motito, a human resource manager. It is averred that the respondent had never refused to settle the dues pertaining to legal representation. It is asserted that the respondent was never served with a ruling notice, relating to taxation of the Advocate/client bill of 31st July 2023. It is further averred that the respondent was not



given an opportunity to challenge the costs awarded. It is pleaded that the respondent was ambushed with the application.

5. The reaction prompted a response from the applicant. It is asserted that the bill of costs and taxation notice were served, and were received, and a date receipt stamp affixed. It is averred that a letter was written, dated 18th October 2023, to the respondent, copied to their Advocates, alerting that the matter was due for taxation on 24th October 2023, and Advocates for the respondent placed themselves on notice, vide a notice of appointment, dated 18th October 2023. The matter came up on 24th October 2023, and there was no attendance from or for the respondent, and the matter was allocated a ruling date. It is averred that upon a ruling date being given, the applicant served a ruling notice on the Advocates on record for the respondent. It is averred that the said Advocates did in fact file written submissions on the bill of costs. It is averred that a ruling was delivered on 5th December 2023, on the taxation, in the presence of a Mr. Odhiambo, for the respondent, who prayed for 30 days stay of execution of the orders granted in the ruling. It is finally averred that there were efforts, by both sides, to settle the matter out of court. It is asserted that the respondent was always well aware of the matter.
6. A number of documents have been attached in support. The Advocate/client bill of costs, dated 31st July 2023, bears a date stamp by the respondent, acknowledging receipt of that bill on 2nd October 2023. A taxation notice, dated 29th September 2023, bears a date stamp by the respondent, indicating receipt of service on 2nd October 2023. An affidavit of service, sworn on 12th October 2023, indicates that the notice of taxation was served on 2nd October 2023, on the respondent, and was received by a secretary, who stamped the front page of the taxation notice returned to court. A letter from the applicant, dated 18th October 2023, to the respondent, and copied to Wasuna & Company, Advocates, notified the respondent of the date for taxation. The letter bears date stamps, acknowledging receipt, by both the respondent and Wasuna & Company, Advocates, both bearing the date of 18th October 2023. A notice of appointment of Advocates, by Wasuna & Company, Advocates, is dated 18th October 2023, the same date when that firm received the letter of 18th October 2023. The ruling notice, dated 27th November 2023, was served on Wasuna & Company, Advocates, on 28th November 2023, and there is a date stamp, acknowledging receipt on that date. Wasuna & Company, Advocates, filed written submissions, on 27th November 2023, dated 23rd November 2023, on behalf of the respondent. The letter, by the applicant, dated 24th August 2024, addressed to Wasuna & Company, Advocates, was received by Wasuna & Company, Advocates, on 27th August 2024, and it communicated about various bills that had been taxed against the respondent.
7. Directions were given on 25th July 2024, for canvassing of the application, dated 11th July 2024, by way of written submissions. I have seen and perused the written submissions filed by the applicant, dated 11th October 2024. I have noted the arguments made. I have not come across written submissions by the respondent.
8. This matter is straightforward. The applicant acted for the respondent, in proceedings that were before the trial court, in Busia CMCCC No. 171 of 2018. The respondent does not dispute that. The applicant became entitled to fees, for the professional services rendered in that matter. The respondent does not dispute that either. Indeed, the respondent asserts that it has not refused to settle the fees. However, despite being furnished with an Advocate/client fee note, it did not settle the fees, nor dispute them. That prompted the applicant to file and serve a bill of costs for taxation. The service of the bill of costs and of the date when taxation was due is not disputed. The only contention is that a notice of the date when the ruling on taxation was due was not served. Yet, there is evidence that that notice was served on the Advocates for the respondent, and an Advocate did indeed attend court for the ruling on taxation, on behalf of the respondent, after written submissions had been filed on its behalf.



9. The material before me is clear that the respondent was served with the requisite court process, relating to taxation, and was represented in the court proceedings. It cannot complain that it was unaware of the proceedings, nor that it did not participate in them. It simply does not have a defence to the claim by the applicant.
10. In view of everything that I have said so far, it should be clear that the application, dated 11th July 2024, is for granting, and I do hereby allow it as prayed. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 27TH DAY OF NOVEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Okwemba and Ms. Owuor, instructed by Ogejo Omboto & Kijala, Advocates for the applicant.

Mr. Odhiambo, instructed by Wasuna & Company, Advocates for the respondent.

