



Andrew & Steve & Advocates v Intergrated YMR Partnership (Miscellaneous Application E858 of 2020) [2023] KEHC 1235 (KLR) (Commercial and Tax) (27 January 2023) (Ruling)

Neutral citation: [2023] KEHC 1235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E858 OF 2020**

**PN GICHOHI, J
JANUARY 27, 2023**

BETWEEN

ANDREW & STEVE & ADVOCATES APPLICANT

AND

INTERGRATED YMR PARTNERSHIP RESPONDENT

RULING

1. By a Notice of Motion dated November 30, 2021, the Applicant seeks orders that judgment be entered against the Respondent/Client in the sum of Ksh 224,785/= in terms of the Certificate of Taxation dated January 26, 2021 with interest thereon at the rate of 14 % per annum from the date of taxation until payment in full. Further, he seeks that the Certificate of Taxation dated January 26, 2022, the Applicant be adopted as decree of the Court and the Advocate/Applicant be at liberty to execute. He asks that the costs of the application be provided for.
2. He states that he filed the billed of costs on dated February 20, 2020 arising from CMCC No 565 of 2018 Samuel Kiarie and Eunice Njuguna (Suing as Administrators of the Estate of Beatrice Wairimu v Intergrated YMR Partnership & another. The bill of costs was unopposed despite the Respondent being served.
3. He states that in her Ruling delivered on December 4, 2020, the Taxing Master taxed the bill at Ksh 224,785/=. A Certificate of Taxation dated January 26, 2021 was issued and served on the Respondent/Client on October 15, 2021 he ignored it. That Certificate has not been altered or set aside by the Court hence this application. The application is supported by the affidavit sworn by Steve Kimathi sworn on November 30, 2021.



Determination

4. I have considered that this application and that the Certificate of Taxation for Ksh 224,785/= issued on January 20, 2022 which has not been set aside or altered by this Court. Under 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.”

5. This was emphasised in Lubulellah & Associates Advocates v NK Brothers Limited [2014] eKLR where the court held ;

“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.”

6. The Respondent/Client was served with the application but did not respond to it and did not attend court. This application therefore remains unchallenged. Paragraph 7 of the Advocates (Remuneration) Order provides that “An advocate may charge interest at 14 per cent 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, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”

7. I am satisfied that the Applicant is entitled to interest at the rate of 14%. The application is allowed in the following terms;

1. Judgment be and is hereby entered in favour of the Applicant as against the Respondents in the sum of Ksh 224,785/= together with interest thereon at 14% per annum calculable after Thirty (30) days from the date when the application was served upon the Respondents until payment in full.
2. The Certificate of Taxation dated January 26, 2022 be adopted as decree of the Court and the Advocate/Applicant be at liberty to execute.
3. Costs awarded to the Applicant.

READ, SIGNED AND DELIVERED VIRTUALLY AT MILIMANI THIS 27TH DAY OF JANUARY, 2023.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Muthoni for Kimathi for Appellants/Applicants



N/A for the Respondent
Grace Njuki, Court Assistant

