



Kinyua Mbaabu & Co. Advocates v Nomads Quintessence Agri-Solutions Limited & 2 others (Miscellaneous Application E449 of 2021) [2023] KEHC 1150 (KLR) (Commercial and Tax) (27 January 2023) (Ruling)

Neutral citation: [2023] KEHC 1150 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E449 OF 2021
PN GICHOHI, J
JANUARY 27, 2023

BETWEEN

KINYUA MBAABU & CO. ADVOCATES APPLICANT

AND

NOMADS QUINTESSENCE AGRI-SOLUTIONS LIMITED ... 1ST RESPONDENT

NICHOLAS KIPKOECH RUTTOH RONO 2ND RESPONDENT

JOYCE CHEMNGETICHCH RONO 3RD RESPONDENT

RULING

1. The application before this court is a Notice of Motion dated July 18, 2022 brought under Section 51(2) of the *Advocates Act* and Rule 7 of the *Advocates (Remuneration) Order*. The Applicant seeks orders that judgment be entered for the Applicant against the Respondents for the sum of Kshs 318,578/= as per the certificate of taxation dated January 20, 2022 together with interest from the date of filing this Application until payment in full. He seeks that upon the Court adopting the certificate of taxation dated January 20, 2022, the Applicant be allowed to execute the same against the Respondents.
2. The application is supported by the affidavit sworn by Kenneth K Mbaabu on July 18, 2022. He states that the Applicant filed an advocate-client bill of costs dated July 28, 2021 but the bill of costs was uncontested. The Taxing Master taxed the bill on July 27, 2021 at Kshs 318,578/= and issued a certificate of taxation dated 20th January 2022 in favour of the Applicant for the sum of Kshs 318,578/=.



Determination

3. I have considered that this application and that there is a certificate of taxation for Kshs 318,578/= 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.”

4. 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 November 25, 2012.”

5. The advocate-client bill of costs was taxed on July 27, 2021 and the certificate of taxation that was issued on January 20, 2022 remains unchallenged. The Respondents were served with the application but did not respond to it and did not attend court .

6. The Applicant is entitled to interest at the rate of 14% under Paragraph 7 of the *Advocates (Remuneration) Order* which 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. 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 Kshs 318,578/= together with interest thereon at fourteen (14%) per cent per annum calculable after Thirty (30) days from the date when the application was served upon the Respondents until payment in full.
2. The Applicant is allowed to execute the same as against the Respondents.
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 Akinyi Mbaabu for Appellants/Applicants



N/A for the Respondent

Grace Njuki, Court Assistant

