



**Muthaura ,Mugambi, Ayugi & Njonjo Advocates v Quality
Centre Limited (Miscellaneous Application E768 of 2020)
[2023] KEHC 1151 (KLR) (Commercial and Tax) (27 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 1151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E768 OF 2020
PN GICHOHI, J
JANUARY 27, 2023**

BETWEEN

MUTHAURA ,MUGAMBI, AYUGI & NJONJO ADVOCATES ADVOCATE

AND

QUALITY CENTRE LIMITED CLIENT

RULING

1. The Advocate/Applicant has moved this Court by way of a Notice of Motion dated 7th February 2022 under Section 51 (2) of the *Advocates Act* Chapter 16 Laws of Kenya and Paragraph 7 of the *Advocates Remuneration* and Order 51 rule 1 of the *Civil Procedure Rules*. He seeks orders that judgment be entered against the Respondent for certified sum of Ksh. 5,463,216.34 on the Certificate of Taxation dated 1st February 2022 and with interest thereon at the rate of 14 % per annum from 10th June 2020, which is the date of filing the bill of costs , until payment in full. He seeks that a decree be issued to that effect and that the costs of this application be provided for.
2. He states that the Applicant filed his amended bill of costs on 10th August 2020 seeking a sum of US Dollars 87,000 in a bid to recover its legal services rendered to the Client / Respondent in High Court Misc. Application No. 454 2016 *Quality Centre Limited v USL(T) (Formerly known as Uchumi Supermarkets Limited) (Tanzania Limited) & Uchumi Supermarkets Limited*.
3. He states that the bill of costs was taxed on 18th November 2021 at an all-inclusive sum of Ksh.5,463,216.34 in favour of the Advocate and that the Respondent has never challenged that Certificate of Taxation. The application is supported by the affidavit sworn by Angela C. Cherenon on 7th February 2022 basically emphasising on the grounds on the face of the application.



Determination

4. I have considered that this application and noted the Certificate of Taxation for Ksh. 5,463,216.34. The application was not opposed by the Respondent despite that he was served. 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. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* (2006) eKLR , it was held: -

“Section 51 of the *Act* makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit...”

6. This was also emphasised in *Lubulellah & Associates Advocates v N K 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.”

7. The application has not been opposed by the Respondent despite that he was served. The Certificate of Costs has not been set aside or altered. In the circumstances the application is allowed in the following terms;

1. Judgement be entered against the Respondent in the sum of Ksh. 5,463, 216.34 together with interest thereon at fourteen (14%) per cent per annum calculable after thirty (30) days from the date when application was served upon the Client.
2. A decree to issue to that effect.
3. Costs of this application are awarded to the Advocate/Applicant.

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

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Mbugua for Cherono for Appellants/Applicants



N/A for the Respondent
Grace Njuki, Court Assistant

