



REPUBLIC OF KENYA



Nyachoti & Company Advocates v Guiseppe & another (Miscellaneous Application E197 of 2013) [2023] KEHC 1155 (KLR) (Commercial and Tax) (27 January 2023) (Ruling)

Neutral citation: [2023] KEHC 1155 (KLR)

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

MISCELLANEOUS APPLICATION E197 OF 2013

PN GICHOHI, J

JANUARY 27, 2023

BETWEEN

NYACHOTI & COMPANY ADVOCATES ADVOCATE

AND

LEON GUISEPPE 1ST CLIENT

WISHIFE INVESTMENTS LIMITED 2ND CLIENT

RULING

1. By a Notice of Motion dated November 30, 2021 and brought under Order 51 Rule 1 of the *Civil Procedure Rules*, Section 51 (2) of the *Advocates Act* Chapter 16 Laws of Kenya and Paragraph 7 of the *Advocates Remuneration Order*, the Applicant seeks orders that judgment in the sum of Ksh 1,095,009.44 be entered in favour of the Applicant against the Respondent as per the Certificate of Taxation dated June 30, 2022 with interest thereon at court rates from June 13, 2022 until payment in full. He also seeks costs of the application.
2. He states that the Applicant filed his amended bill of costs dated August 20, 2013 against the Respondent seeking a sum of Ksh 1,095,009.44 arising out of representation in Nairobi High Court Civil Case No 1345 of 2003 *Lucy Wangari Akwenyu, Ibrahim Mwangi (As Administrators and legal Representative of the estate of Purity Wanjiru Mwangi) v Leone Guiseppe & Wish Life Investments Limited*. The bill was taxed vide ruling dated June 13, 2022 for the said sum of Ksh 1,095,009.44 and a Certificate of Taxation issued to that effect on July 1, 2022. It was served on the Respondent on July 6, 2022.
3. Further, he states that the Certificate has not been reviewed, set aside and/or varied. by the Court hence this application. The application is supported by the affidavit sworn by Philip Nyachoti on July 13, 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 1,095,009.44. The application was not opposed by the Respondents. The record shows that the Respondents were served with the application as well as the mention notices. 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 *Lubulellab & 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.”

9. There is no reference against the Taxing Officer’s and ruling and the Certificate of Costs has not been reviewed, set aside and/or varied. There is no other action required from the Court save to enter judgment in the circumstances. I therefore allow the application on the following terms;
1. Judgement be entered against the respondents in the sum of Ksh 1,095,009.44 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. Costs of this application are awarded to the Advocate.

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

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Kimemia for Nyachoti for Appellants/Applicants

N/A for the Respondent

Grace Njuki, Court Assistant

