



MJD Associates Advocates v Timwood Products Limited (Miscellaneous Application E187 of 2022) [2023] KEHC 1389 (KLR) (Commercial and Tax) (28 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E187 OF 2022**

**PN GICHOHI, J
FEBRUARY 28, 2023**

BETWEEN

MJD ASSOCIATES ADVOCATES ADVOCATE

AND

TIMWOOD PRODUCTS LIMITED CLIENT

RULING

1. Before this court is a Notice of Motion dated August 2, 2022 brought under Section 51(2) of the *Advocates Act*, Rule 7 of the Advocates (Remuneration) Order and Sec. 1 A, 1B, 3, 3A & 34 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*. The Advocate/Applicant seeks orders that judgment be entered against the Client/Respondent for the sum of Ksh 330,699/- being the Advocate's taxed and certified costs in Milimani CMCC. No 4397 of 2018 as per the Certificate of Taxation dated July 18, 2022.
2. He also seeks interest on the same at 14% per annum from May 6, 2022 being the 30th day from the date on which the Bill of costs was served upon the Client/Respondent as per the provisions of Paragraph 7 of the *Advocates Remuneration Order and Rules*, until payment in full. He further prays that the costs of the application be borne by the Respondent.
3. In the affidavit sworn on August 2, 2022 by Derek Mwoma Advocate practising in the said firm of Advocates, the Applicant states that they filed an Advocate/Client Bill of Costs dated March 1, 2022 to recover costs for services rendered to the Client in Milimani CMCC. No 4397 of 2018 and served it together with the taxation notice on the Respondent. However, the Respondent failed to enter appearance or file a response. Consequently, the bill was taxed vide ruling dated June 17, 2022 at Ksh 330,699/-.



4. That despite the Respondent being served with the Certificate of Taxation on July 25, 2022, no response was filed and the same has not been challenged. Further, it has not been set aside and there are no outstanding proceedings to set it aside.

Determination

5. I have considered this application and the annexures thereto which conform that there is a Certificate of Taxation for Ksh 330,699/- dated July 18, 2022 and the Respondent did not challenge it. It has not been set aside or altered by this Court. Though served, the Respondent did not file any response and did not attend this court either. This certificate is therefore final in the circumstances as provided for under Section 51 (2) of the *Advocates Act* 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.”

6. It is therefore quite in order for this court to enter judgment in favour of the Advocate/Applicant for the taxed sum as per the Certificate of Taxation and allow the Applicant to get the fruits of his labour as per law provided.
7. Under paragraph 7 of the *Advocates (Remuneration) Order*, “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.”
8. In the circumstances the application dated August 2, 2022 is allowed in the following terms:-
 1. Judgment be and is hereby entered in favour of the Applicant as against the Respondent in the sum of Ksh 330,699/- 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 Respondent until payment in full.
 2. The Applicant is at liberty to execute the same as against the Respondent.
 3. Costs are awarded to the Applicant.

DATED , SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 28TH DAY OF FEBRUARY, 2023.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Onyancha for Advocate/Applicant

N/A for the Client/Respondent

Kevin Isindu, Court Assistant

