



REPUBLIC OF KENYA



**LJA Associates LLP v IVRCL Limited (Miscellaneous Application E291 of 2021)
[2023] KEHC 1395 (KLR) (Commercial and Tax) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E291 OF 2021
PN GICHOHI, J
FEBRUARY 23, 2023**

BETWEEN

LJA ASSOCIATES LLP APPLICANT

AND

IVRCL LIMITED RESPONDENT

RULING

1. Before this court is a Notice of Motion dated January 18, 2022 brought under section 51(2) of the *Advocates Act*, rule 7 of the *Advocates (Remuneration) Order* and sec 1A, 1B and 3A of the *Civil Procedure Act*. The advocate/applicant seeks orders that judgment be entered against the client/respondent for the sum of ksh 29,493,406/- in terms of the certificate of taxation dated July 22, 2021 together with interest from June 10, 2021 until payment in full. He also prays that the applicant be at liberty to execute the same against the respondent and that the costs of the application be borne by the respondent.
2. The grounds thereof are that the client/respondent instructed the advocate/applicant to act for it in issuing legal advice in relation to a sub- contract that was being tendered by the respondent to Afrikon worth USD 13,681,825. The applicant then filed a bill of costs on April 20, 2021 which was unopposed and duly taxed. The respondent did not dispute the retainer and the bill remain unsettled.
3. Joseph Ndondo advocate swore an affidavit on January 18, 2022 in support of the application and basically reiterating the grounds on the application. Miss Dave advocate for the applicant opted not to file any submissions but to rely on the said application and affidavit in support.



Determination

4. I have considered this application. There is certificate of taxation for ksh 29,493,406/- 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. Under section 51 (2) of the Advocates Act:-

“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 position of law has been settled by courts. It was 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 November 25, 2012.”

6. The certificate of taxation issued on January 10, 2022 and has not been set aside or altered by this court. 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.”

7. Putting those factors into consideration, the application 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 29,493,406/- 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 allowed to execute the same as against the respondent.
3. Costs awarded to the applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 23RD DAY OF FEBRUARY, 2023.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr Riri for Dave for appellants/applicants

N/A for the respondent

Isindu court assistant

