



REPUBLIC OF KENYA



Madzayo Mrima & Jadi Advocates v Mombasa Water & Sewerage Company (Miscellaneous Application 189 of 2018) [2023] KEHC 27589 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 27589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 189 OF 2018**

F WANGARI, J

JULY 28, 2023

IN THE MATTER OF: ADVOCATES – CLIENT BILL OF COSTS

AND

IN THE MATTER OF: THE ADVOCATES ACT CHAPTER 16 LAWS OF KENYA

BETWEEN

MADZAYO MRIMA & JADI ADVOCATES APPLICANT

AND

MOMBASA WATER & SEWERAGE COMPANY RESPONDENT

RULING

1. The ruling is in respect of the Notice of Motion dated 25/5/2022. The application seeks the following orders: -
 - a. That judgment be entered for the Applicant against the Respondent in the sum of Ksh. 127,274 being the sum taxed and certified by the Deputy Registrar on 10/12/2020.
 - b. Costs be provided.
2. The Respondent filed a Replying Affidavit stating that the Applicant is seeking payment from the wrong party i.e. Mombasa Water Supply & Sanitation Company Limited (MOWASSCO), yet the instructing entity was Mombasa Water and Sewerage Company. It was further deponed that the current entity was not cited in the application for Bill of Costs.
3. Directions were given that the application be disposed of by way of written submissions. Both parties complied and given an opportunity to highlight on their submissions. Only the Respondents highlighted their submissions as the Applicants were absent despite the date being fixed by consent.



Analysis and Determination

4. I have considered the application, the supporting affidavit, the annexures and the submissions thereto. The issues for determination are;
 - a. Whether Mombasa Water & Sewerage Company Limited (MOWASSCO) took over operations from the Respondent
 - b. If (a) above is to the affirmative, whether the application is meritorious;
 - c. What is the order as to costs?
5. On the first issue, it is not in dispute that the Respondent and the Applicant had an Advocate/ Client relationship, hence giving rise to the Bill of Costs and subsequent Certificate of Costs, which is the subject to this application.
6. The Respondent submitted that it was incorporated in year 2005, and instructions were issued to the Applicant in year 2008, while it was still under Mombasa Municipality. MOWASSCO was incorporated in year 2011, after instructions had already been given to the Applicant by the Respondent. There is no proof that there was transfer of operations from the respondent to MOWASSCO, hence the entity is not liable.
7. The Applicant submitted that MOWASSCO took over the responsibilities from the Respondent. The instructing body for the Respondent was the National Water Conservation & Pipeline Corporation (NWCPC), established under the [Water Act](#), 2002, which was repealed by the [Water Act](#), 2016.
8. NWCPC transitioned to the National Water Harvesting & Storage Authority (NWHSA) and was liable under Section 156 of the [Water Act](#) which provides as follows;
 - ‘56. (I) The [Water Act](#) 2002, is repealed.
 - (2) The National Water Conservation and Pipeline Corporation Order, 1988, is revoked.
 - (3) Notwithstanding the repeals effected by this section-
 - (a) the Water Appeals Board, Water Resources Management Authority, a water services board or a water services provider and any other body established under an enactment repealed by this section shall be deemed to continue in being; and
 - (b) any person or body performing any functions under the [Water Act](#),2002 shall continue to do so, and in so doing may exercise any power vested in that person or body with respect to the performance of those functions, until the Cabinet Secretary, by notice in the Gazette revokes this subsection in full or in part as may be necessary.
 - (4) Without prejudice to subsection (3), Regulations made under section 142(2)(r) shall require that the transfer of functions, assets, liabilities and staff shall be completed within a period of three years following the commencement of the Act.
 - (5) The provisions of the Environmental Management and Coordination Act, 1999 relating to water resources conservation and protection and water pollution control shall be exercised subject to the relevant provision of this Act and only in the event that the Board has failed or neglected to take appropriate action to exercise its powers and functions under this Act.



9. NWCPC transitioned to NWHSA under the new *Water Act*. It was the instructing entity. By the above provision, MOWASSCO cannot escape its obligations towards payment of the taxed costs. I do agree with the Applicant's supplementary submissions on the issue.
10. On the Bill of Costs against the Respondent was taxed at a sum of Ksh. 127,274 and a Certificate of Taxation issued on 15/8/2020. Section 51 (2) of the *Advocates Act* reads: -
- ‘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’.
11. Rule 7 of the Advocates (Remuneration) Order 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.’
12. The Certificate of Taxation having not been set aside, the issue now is the interest payable. From Rule 7 of the Advocates Remuneration Order, the Applicant is entitled to interest of costs at a rate of 14% per annum after the expiration of one month from the delivery of the bill of costs to the client. Interest in this case starts to run from the date when the certificate of costs was issued i.e. 14/8/2020.
13. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others [2013]* eKLR. In the present circumstances, I thus see no reason why I should deny the Applicant costs of the application.
14. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. The Certificate of Costs issued to the applicant, as against the respondent dated 14/8/2020 is hereby converted into a judgement and decree of this court and consequently, a judgement is entered for the applicant against the respondent, for Kshs. 127,274.
 - b. Interest on (a) above do accrue at the rate of 14% per annum, with effect from 14/8/2020.
 - c. Costs awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 28TH DAY OF JULY, 2023.

F. WANGARI

JUDGE

In the presence of:

Muronji Advocate for the Applicant

N/A for the Respondent

Abdullahi, Court Assistant

