



Nzei & Company Advocates v Wendano Matuu Company Limited (Environment and Land Miscellaneous Application E014 of 2022) [2023] KEELC 16979 (KLR) (24 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16979 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022**

CA OCHIENG, J

APRIL 24, 2023

**IN THE MATTER OF ADVOCATE-CLIENT BILL OF COSTS UNDER
THE ADVOCATES REMUNERATION ORDER OF THE ADVOCATES**

ACT (CAP 16 OF THE LAWS OF KENYA)

ARISING FROM

THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC NO. 31 OF 2020

WENDANO MATUU COMPANY

LIMITED.....PLAINTIFF

VERSUS

STEPHEN NDAMBUKI MULL.....1ST

DEFENDANT

CANNON ALUMINIUM FABRICATORS LTD.....2ND

DEFENDANT

WAMBUA & MASENO LLP ADVOCATES.....3RD

DEFENDANT

BETWEEN

NZEI & COMPANY ADVOCATES APPLICANT

AND

WENDANO MATUU COMPANY LIMITED RESPONDENT



RULING

1. What is before court for determination is the applicant's notice of motion application dated the September 28, 2022 brought pursuant to section 51(2) of the Advocates Act, sections 1A, 1B, 3, 3A and 27 of the Civil Procedure Act. The applicant seeks for the following orders:
 1. That this honourable court do enter judgment against the respondent for a sum of Kshs 3,696,959.00 (Three million six hundred and ninety six thousand nine hundred and fifty nine shillings) being the taxed and certified costs payable to the applicant by the respondent.
 2. That this honourable court do award interest on the aforesaid sum of Kshs 3,696,959.00 (three million six hundred and ninety six thousand, nine hundred and fifty nine shillings) at court rates from the date of such award until payment in full.
 3. That costs of this application be paid by the respondent.
2. The application is premised on the grounds on the face of it and supporting affidavit of Benjamin M. Nzei Advocate, where he deposes that his law firm rendered legal services to the respondent herein in Machakos ELC No 31 of 2020 (Wendano Matuu Company Limited v Stephen Ndambuki Muli & 2 others) but the respondent failed to pay the appropriate legal fees, disbursements forcing the said law firm to file advocate/client bill of costs *vide* the cause herein for taxation by the court. He confirms that on August 31, 2022, the costs payable to his law firm by the respondent was taxed at Kshs 3,696,959.00 and a certificate of costs was duly issued by this honourable court. He claims the respondent has shown no commitment in paying the taxed amount. He prays for the judgment to be entered as sought in the instant application.
3. In response to the instant application, the respondent filed a replying affidavit sworn by Joshua Kimeu Kioko, its director where he confirms that there was an advocate client retainer. He avers that the court indeed taxed the costs payable to the applicant at Kshs 3,696,959 but contends that there existed a client-advocate retainer that the respondent herein would pay the applicant a sum of Kshs 3,000,000 only for full legal services rendered. He insists that the applicant did not provide full legal services to the respondent thus it does not warrant full payment of legal fees. Further, that it is their position that the applicant should have been entitled to half payment being Kshs 1,500,000 as payment for half the legal services offered to the respondent. He states that the proper legal fees should be Kshs 933,000 being Kshs 1,500,000 less Kshs 567,000. He reiterates that the applicant's application as drawn is bad in law and orders sought would cause injustice to the respondent, hence it should be dismissed.
4. The applicant filed a further affidavit sworn by Benjamin M. Nzei Advocate where he explains that they had instructions to represent the respondent herein in the following matters: Machakos High court civil case No 2 of 2014; Machakos ELC 129 of 2017; Machakos ELC 455 of 2017; Kangundo Misc 71 of 2020; Kangundo SPM civil case 54 of 2020; Machakos ELC 31 of 2020 and Machakos ELC E 12 of 2021. He does not dispute the receipts produced by the respondent but urges the court to take notice of the fact that on the face of the said receipts, there is a provision for indication of the file number and/or the reference number as per the applicant's internal records. He argues that the advocate client relationship as between the applicant and respondent was not limited to the instant proceedings (Machakos ELC 31 of 2020) as there were other numerous matters that the applicant conducted on behalf of the respondent. He explains the procedure in respect to referencing in their office as regards file MKS/169/W/2017 and avers that the respondent had instructed them to represent it, in Machakos High Court civil case 2 of 2014. Further, that the reference numbers on all the payment



receipts that the respondent seeks to rely on coincide with the reference number of Machakos High Court civil case 2 of 2014 and that the payments made thereon are with respect to the said case. He reiterates that the taxed bill of costs herein is with respect to Machakos ELC 31 of 2020 which is referenced as MKS/180/W/2020 and this file was opened at their office in Machakos in 2020. Further, the applicant filed various documents including pleadings with respect to Machakos ELC 31 of 2020 on behalf of the respondent. He reaffirms that the respondent herein attempts to appeal and or set aside the certificate of costs contrary to the provisions of the law. He contends that as per the payment receipts adduced by the respondent, the payments thereon were made on diverse dates in the year 2017 – 2020. Further, it is therefore impractical that payments would have been made and receipts issued way before they were instructed.

The application was canvassed by way of written submissions.

Analysis and Determination

- 5 Upon consideration of the notice of motion application dated the September 28, 2022 including the respective affidavits as well as the applicant’s submissions, the only issue for determination is whether the court should enter judgment against the respondent for the sum of Kshs 3,696,959.00 being the taxed as well as certified costs and if interest at court rates should be awarded on the said amount.
- 6 The applicant in its submissions reiterated its averments as per the respective affidavits and contended that this court should enter judgment against the respondent in terms of the certificate of costs issued on September 28, 2022. It argued that the respondent had not made any application seeking the aforementioned certificate of costs to be varied and or set aside. Further, that the respondent participated in the taxation proceedings and never challenged or raised any issues nor filed a reference. It further submitted that interest should be levied on the taxed costs. Further, that since the bill of costs was filed on March 15, 2022 and taxed on August 31, 2022, hence the interest should have begun accruing from April 15, 2022. To support its arguments, it relied on section 51(2) of the *Advocates Act* as well as the following decisions: *Otieno Ragot & Company Advocates v Kenya Ports Authority* (2021) eKLR; *Otieno Ragot & Company Advocates v National Bank of Kenya* (2022) eKLR and *Makhecha & Company Advocates v Central Bank of Kenya Limited* (2009) eKLR.
- 7 The respondent opted not to file written submissions.
- 8 On adoption of certificate of costs as judgment of court, section 51(2) of the *Advocates Act* stipulates 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.”
- 9 On charging of interest on costs, rule 7 of the *Advocates (Remuneration) Order* provides that:-

An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”
- 10 In the case of *Lubulellah & Associates Advocates v N. K Brothers Limited* [2014] eKLR the court stated that:



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.”

- 11 See also the decisions of *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR and *D. Njogu & Company Advocate v Kenya National Capital Corporation* [2006] eKLR.
- 12 In this instance, the applicant seeks for adoption of the certificate of costs as judgment of court as well as charging of interest to the taxed costs. I note the respondent has opposed the instant application arguing that the said application is bad in law. Further, that the applicant is entitled to less monies as compared to the taxed amount. It is trite that any party who opposes a decision by the taxing officer in respect to a bill of costs is expected to file a reference in accordance with the provisions of rule 11 of the *Advocates Remuneration Order*. However, at this juncture, I opine that since the taxed costs were not challenged and a certificate of costs issued, then the provisions of section 51(2) of the *Advocates Act* would apply and the said taxed and certified costs entered as judgment of the court. It is my considered view that since the applicant was awarded costs, rule 7 of the *Advocates (Remuneration) Order* allows it to charge interest on the said costs hence I find that it is also entitled to interest charged on the same until payment in full.
- 13 It is against the foregoing that I find the instant application merited and will allow it. I proceed to make the following final orders:
 - i. That judgment be and is hereby entered against the respondent for a sum of Kshs 3,696,959.00 (three million six hundred and ninety six thousand nine hundred and fifty nine shillings) being the taxed and certified costs payable to the applicant by the respondent.
 - ii. Interest be and is hereby awarded on the aforesaid sum of Kshs 3,696,959.00 (three million six hundred and ninety six thousand nine hundred and fifty nine shillings) at court rates from the date of taxation of the bill of costs which is August 31, 2022, until payment in full.
 - iii. That costs of this application be paid by the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 24TH DAY OF APRIL, 2023

CHRISTINE OCHIENG

JUDGE

