



REPUBLIC OF KENYA



**KENYA LAW**  
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**Obonyo t/a Lawrence Obonyo Legal Advocates v Teti (Miscellaneous Application  
E153 of 2021) [2023] KEHC 27594 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27594 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E153 OF 2021  
F WANGARI, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**LAWRENCE OMONDI OBONYO T/A LAWRENCE OBONYO LEGAL  
ADVOCATES ..... APPLICANT**

**AND**

**JACKSON GORDON TETI ..... RESPONDENT**

**RULING**

1. This ruling relates to an application dated 15<sup>th</sup> July, 2022 and filed on 20<sup>th</sup> July, 2022 seeking the following orders: -
  - a. That the Certificate of Costs in respect of the taxation Order made on 9<sup>th</sup> May, 2022 in the sum of Kenya Shillings Ninety Four Thousand and Fifty Shillings only (Kshs. 94,050/=) be adopted as judgement and Decree of this Court;
  - b. That the Respondent do pay the Applicant interest at the rate of 14% per annum from 23<sup>rd</sup> February, 2022 when the Bill of Costs was taxed and allowed until payment in full; and
  - c. That the Costs of the Application be provided for.
2. Though the Respondent filed responses dated 9<sup>th</sup> June, 2023 and 13<sup>th</sup> June, 2023, I note that they are in relation to the Bill of Costs which was taxed way back on 23<sup>rd</sup> February, 2022 and a certificate of taxation issued on 9<sup>th</sup> May, 2022. I equally note that the Respondent wrote a letter dated 19<sup>th</sup> June, 2023 requesting that his reply to the bill of costs dated 13<sup>th</sup> June, 2023 be expunged from the court's record. He further sought a refund of Kshs. 300/= which was paid for filing. Before I delve on the substance of the application, I wish to address the issues raised by the Respondent in his letter.
3. It is not in dispute that the Respondent filed his reply to the Bill of Costs dated 13<sup>th</sup> June, 2023. However, was there a basis for that reply when the Bill of Costs had already been taxed way back



in February, 2022 and a certificate of taxation issued? The only way the Respondent would have challenged the taxation was through a reference and not trying to re-litigate what the Taxing Master had already dealt with.

4. All he needed to do was to comply with the mandatory requirements of Rule 11 of the *Advocates Remuneration Order*. Therefore, whether the document is expunged or not does not affect the present application.
5. On refund, it is trite that a litigant such as the Respondent herein was not coerced into filing whatever document he filed. In the circumstances, he expended whatever amounts he expended without duress, coercion and/or mistake. As such, the demand for a refund in my view, is simply stretching the confines of access to justice as entrenched in *the Constitution* of Kenya. I leave it at that.
6. Having said as above, the application was unopposed. However, I note that directions had been taken that the application be disposed of by way of written submissions. The Applicant duly complied by filing submissions as well as cited various decided cases in support of their position. I have duly considered the said submissions and I am grateful to Counsel for their industry and time in preparing the submissions. They are a useful guide to the court in arriving at a just determination on the issue at hand.

### **Analysis and Determination**

7. Having considered the application, written submissions, cited authorities and the law, the following are the issues for determination: -
  - a. Whether the application dated 15<sup>th</sup> July, 2022 is merited;
  - b. Who bears the costs:
8. There is no contest that the Bill of Costs was taxed on 23<sup>rd</sup> February, 2022 and Certificate of Taxation issued on 9<sup>th</sup> May, 2022. What the Applicant seeks is the adoption of the said certificate as judgement and decree of the court and the interests. The application is founded on Section 51 (2) of the *Advocates Act*. It provides as follows: -

“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. The above mentioned provision was reiterated in the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* (2006) eKLR where it was held: -

“...Section 51 of the *Act* makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit...”



10. In *Tom Ojienda & Associates v Nairobi City County* (Miscellaneous Application E620 of 2019) [2022] eKLR, it was held thus: -

“The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:

- a) The costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
- b) The Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
- c) There is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.”

11. The court cited the case of *Lubulellah & Associates Advocates v N.K. Brothers Ltd* [2014] eKLR where it was held as follows: -

“...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...”

12. From the material placed before it, this court finds that this is a suitable case for it to exercise its discretion in favour of the Applicant and therefore proceeds to enter judgment against the Respondent for the certified sum.

13. On the issue of interests on the taxed costs, Rule 7 of the *Advocates Remuneration Order* is the operative provision. It provides as follows: -

“An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiry to one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount has been paid or tendered in full.”

14. The above Rule sets two (2) conditions to be satisfied. The first is that one (1) month has lapsed from the date of the delivery of the Bill of Costs to the Respondent. Second, one ought to raise his or her claim for interest before the amount of the bill has been paid or tendered in full.

15. On the first condition, I note that the Respondent was served with the Bill of Costs dated 19<sup>th</sup> July, 2021 on 2<sup>nd</sup> August, 2021. The affidavit of service of Musyoka Samuel is testament to this. Based on Rule 7, one month lapsed on 2<sup>nd</sup> September, 2021. I am thus satisfied that the first condition was complied.

16. On the second condition, the Respondent was served with a Bill of Costs which it failed to settle. As at the time the application dated 15<sup>th</sup> July, 2022 was filed, the amount due was yet to be paid and I am equally satisfied that the second condition has been established and I thus proceed to award interest at 14% on the taxed costs.



17. As to the issue of costs, the same follows the event. That is what Section 27 of the *Civil Procedure Act* decrees. However, this court has the discretion to direct otherwise. The Applicant having succeeded, I see no reason why I should deny him costs which I so award.
18. Flowing from the foregoing, I find that the application dated 15<sup>th</sup> July, 2022 has merit and the same is allowed on the following terms: -
- a. The Certificate of costs in respect to the taxation order made on 9<sup>th</sup> May, 2022 in the sum of Kenya Shillings Ninety Four Thousand and Fifty Shillings Only (Kshs. 94,050/=) is hereby converted into a Judgement and Decree of this Court and consequently, judgement is entered for the Applicant against the Respondent for Kshs. 94,050/=;
  - b. Interest on the sum of Kshs. 94,050/= do accrue at the rate of 14% per annum with effect from 9<sup>th</sup> May, 2022 until payment in full;
  - c. Costs of the application awarded to the Applicant.

Orders accordingly

**DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**F. WANGARI**

**JUDGE**

In the presence of:

Kavochi Advocate for the Applicant

Respondent present in person.

Barile, Court Assistant

