



Kaimba Peter & Company Advocates v Nagaria & 3 others (Miscellaneous Civil Application E023 of 2022) [2022] KEHC 12056 (KLR) (17 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12056 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E023 OF 2022
EM MURIITHI, J
AUGUST 17, 2022**

BETWEEN

KAIMBA PETER & COMPANY ADVOCATES APPLICANT

AND

VINODKUMAR HANSRAJ NAGARIA 1ST RESPONDENT

DHIPAK AMRITLAL DODHA 2ND RESPONDENT

DODHIA HAISAH DIPAK 3RD RESPONDENT

RACHILA VINODKUMAR NAGARIA 4TH RESPONDENT

RULING

1. By notice of motion dated July 4, 2022, the applicant/client herein requests from an order for payment by instalments in the sum of Kshs 20,000 per month to liquidate costs taxed at 152,654 by the taxing master by assessment of June 2, 2022, and prays for lifting of warrants of attachment.
2. The applicant takes a secondary objection to the warrants of attachment herein that they are illegal and unlawful having been taken out without a formal judgment under section 48 of the *Advocates Act*, and, therefore, premature.
3. Application is opposed by the respondent/advocate who urges in grounds of opposition that the right to execution was accrued upon the taxing of the advocate/ client bill of costs, and it had not been demonstrated by evidence that the applicant/client had any financial difficulties as prevented him from paying the court of taxed costs. The respondent asserted lack of clean hands in the applicant in failing to pay for services rendered in 2020.
4. Upon hearing counsel for the parties, the court avails itself of this opportunity to determine the procedure for execution of taxed costs in advocate/client bill of costs.



5. Section 48 of the *Advocates Act* is in the following terms:-

“ 48. Action for recovery of costs

1. Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the court’s jurisdiction, in which event action may be commenced before expiry of the period of one month.
2. Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.
3. Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.

[Act No 2 of 2002, Sch]

6. It is clear that while taxation of a party and party bill of costs concludes the determination of the suit and opens the process of execution of the decree therein, the taxation of an advocate – client bill of costs is only a determination of the costs payable by the client to the advocate, and it does not open the matter to execution for the payment of costs and is not capable of execution as a judgment or decree of the court without a further step of entry of judgment therefor which is the process prescribed under section 48 of the *Advocates Act*, by action for recovery of the costs. At the end of a taxation of an advocate bill of costs there is a determination of the amount of costs. If the client pays the costs, that is the end of the matter. However, if payment is sought to be enforced by execution, that determination must be made into a judgment of a competent court, of course depending on the quantum, and the ensuing decree executed in the usual manner.
7. The *Advocates Act* sets out to protect the client by providing that the action for recovery of costs may be mounted until a notice of one month of the bill for such costs is given to the client, save where the client is about to leave jurisdiction. See s 48 (1).
8. By section 48 (2) the *Advocates Act* requires a suit for recovery of costs, where the client will not pay up without process of the court.
9. Under subsection 3 of s 48, a bill of costs between the advocate and his client may be taxed even if no suit for recovery has been filed. The court can think of many reasons where the advocate or his client may require a certificate of the costs payable even if no intention or circumstances exist to enforce the payment by action in court.
10. Peeled off its draftsman’s expression, section 48 of the *Advocates Act* provides that an advocate may tax this bill of costs against his client even one who agrees to pay and only seek to establish the amount payable; but where the advocate needs to enforce payment of this costs he is obligated to file a suit for recovery of such costs, which must be ascertained by taxation and which suit may only be brought 30



days after delivery to the client of a bill of such costs, unless there risk of the client leaving Kenya or the jurisdiction of court. Where the client does not pay costs due to an advocate, recovery must be by action in accordance with section 48 of the [Advocates Act](#).

11. In the present case, the Advocate/respondent has not sued for recovery of the taxed costs. The warrants of attachment in execution are technically invalid and must, therefore, be set aside.
12. However, the court notes that the applicant/client has indicated willingness to pay the taxed costs. As pointed out by counsel for the respondent, the client had 14 days after the taxation of the bill of costs to challenge the taxation by the taxing officer through a reference under rule 11 of the [Advocates Remuneration Order](#). Having failed to file a reference under rule 11 of the [Advocate Remuneration Order](#), the taxation certificate for the payment of Ksh, 152,654/= by ruling of the taxing officer of June 2, 2022 is affirmed by this court as due and payable.
13. Should the advocate be required to file a suit for recovering of the costs in accordance with section 48 of the [Advocates Act](#) while that course is open to the Advocate, and it would lead to a judgment, capable of execution under the [Civil Procedure Act](#), it would no doubt delay the conclusion of the matter further and offend the provisions of the overriding objective of the civil process under section 1A and 1B of the [Civil Procedure Act](#) for “just, expeditious, proportionable and affordable resolution of civil disputes.”
14. Order 22 rule 34 of the [Civil Procedure Rules](#) permits in execution proceedings the payment of the decretal amount by instalments if it appears to the court that the judgment debtor is unable, from poverty or other sufficient cause, to pay the amount of the decree.”
15. As pointed out by the Advocate/respondent there is no evidence of the client’s inability to pay by way of “recent tax returns, audited financial statements, or bankruptcy proceedings.”
16. However, the court finds it appropriate to consider the prayer for payment by installments in the interest of promoting the overriding objective of the civil process to an expeditious and just determination. In addition, the equities are equal on both sides as the advocate has not come to court by action for recovery of the costs taxed against his client and the client who has not challenged the taxation of the bill of costs within the time prescribed has not paid the amount taxed against him. The court, however, considers that the payment by instalments at 20,000/= per month will take too long to liquidate the taxed costs having regard to the period of prior delay in the payment of services duly rendered to the client by the advocate back in 2020.
17. The court considers that an instalment plan which liquidates this debt in four (4) months will meet the justice of the case.

Orders

18. Accordingly, from the reasons set out above, the court makes the following orders;
 1. The warrants of attachment issued by the court herein are vacated.
 2. There is granted to the applicant/client for the payment of the taxed costs in the sum of Kshs 152,654/= with interest thereon at 14% until payment in full, in monthly instalments of Kshs 40,000/= until full payment.
 3. The parties shall share the costs of the Auctioneer in the ratio of 50:50, the amount thereof being agreed between the parties and the auctioneer, or taxed in default of agreement and paid forthwith.
 4. In default of any of the terms hereinabove, execution to issue.



5. There shall be no orders as to costs.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF AUGUST, 2022.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/s Kaimba Peter & Co Advocate for the Applicant/Advocate.

M/s Kiautha Arithi & Co Advocates for the Respondent/Client.

