



REPUBLIC OF KENYA



**Mamicha & Company Advocates v Nairobi Water & Sewerage Company Limited (Miscellaneous Civil Application 606 of 2013) [2022] KEHC 13082 (KLR) (Civ) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13082 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION 606 OF 2013  
JK SERGON, J  
SEPTEMBER 23, 2022**

**BETWEEN**

**MAMICHA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED .. RESPONDENT**

**RULING**

1. Pending before me for determination is the notice of motion dated July 28, 2021 supported by the grounds laid out on its face and the facts stated in the affidavit sworn by advocate Martin Mugi Mamicha, seeking the following orders:
  - i. That judgment be entered for the advocate for the sum of Kshs 155,060/=.
  - ii. That interest be awarded from June 8, 2014 at 14%.
  - iii. That costs of the application be certified at Kshs 30,000/=.
2. This court notes from the record that the replying affidavit was not traceable on the portal or in the court file, for reference purposes. However, it is apparent from the record that the applicant filed a supplementary affidavit.
3. At the interparties hearing of the motion, the parties' advocates made brief oral arguments.
4. I have considered the grounds laid out on the face of the motion, the facts deponed in the affidavits supporting the motion, and the brief oral arguments made respectively.
5. As earlier mentioned, the instant motion mainly sought for the entry of judgment.



6. In support thereof, advocate Martin Mugi Mamicha states that the advocate-client bill of costs which was filed by the applicant and taxed has not been challenged, and hence the applicant is entitled to the sum sought therein, together with interest at the rate of 14% p a.
7. The advocate further states in his supplementary affidavit that the respondent has refused and/or neglected to settle the outstanding fees and hence the motion.
8. In oral arguments, Kisaka counsel for the respondent argues that the respondent requires a KRA pin certificate since its payment system is connected to its supplier, and hence the instant motion is unnecessary, to which Odhiambo advocate for the applicant has retorted with the argument that the request for the KRA pin is merely a delaying tactic and cannot act as a prerequisite for settlement of the outstanding fees.
9. Upon my perusal of the record, I note that the applicant filed the advocate-client Bill of Costs dated June 25, 2013 and the same was taxed by the taxing master on April 29, 2021 resulting in the issuance of a certificate of taxation on May 12, 2021.
10. Upon my further perusal of the record, there is nothing to indicate that the certificate of taxation has either been challenged by way of a reference or that it has been set aside.
11. The provision of section 51(2) of the *Advocates Act* is well settled that a certificate of taxation is final unless and until it is set aside or varied. The court in the case of *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR stated the following:

“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.”
12. A similar reasoning was adopted by the court in the recent case of *Ndungu Gitbuka and Company Advocates v Geoffrey Moriaso Ole Mailoy* [2019] eKLR, where it reasoned that in the absence of an order for variation or setting aside, a certificate of taxation is conclusive as to the sums ascertained to be owing.
13. Having already established that there is nothing to show that the certificate of taxation in the present instance has been challenged, this court has no other business save to enter judgment in accordance with the amount indicated in the certificate of taxation.
14. On the subject of interest, rule 7 of the *Advocates (Remuneration) Order* provides as follows:

“An advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full.”
15. On the subject of the KRA pin certificate, upon my consideration of the rival arguments, I am of the view that the said subject is neither here nor there, and has no clear bearing to the issue at hand. I am therefore not convinced that the presence or otherwise of the said pin certificate would in any way preclude the pursuit of any outstanding fees by the applicant.



16. In the circumstances and in the absence of any credible evidence to the contrary, I am satisfied that the applicant herein is entitled to the sums taxed together with interest and I will allow the motion dated July 28, 2021 in terms of orders (i) and (ii).

17. Consequently:

- i. Judgment be and is hereby entered in favour of the advocate/applicant and against the client/respondent in the sum of Kshs 155,060/=.
- ii. Interest on a) shall accrue at 14% p.a from June 8, 2014 until payment in full.
- iii. The applicant shall also have costs of the motion dated July 28, 2021.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Advocate/Applicant

..... for the Client/Respondent

