



**Munikah & Company Advocates v Official Receiver and Provisional Liquidator
(Kenya National Assurance Company Limited (In Liquidation) (Miscellaneous
Application 735 of 2012) [2022] KEHC 16287 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION 735 OF 2012
DO CHEPKWONY, J
NOVEMBER 24, 2022**

BETWEEN

MUNIKAH & COMPANY ADVOCATES APPELLANT

AND

**OFFICIAL RECEIVER AND PROVISIONAL LIQUIDATOR
(KENYA NATIONAL ASSURANCE COMPANY LIMITED (IN
LIQUIDATION) RESPONDENT**

RULING

1. Before this court, is a notice of motion application dated August 26, 2021 in which the applicant is seeking for orders that;
 - a. The Judgment be and is hereby entered for the applicant, Munikah & Company Advocates, against the Respondent, Official Receiver and Provisional Liquidator of Kenya National Assurance Company Limited (in liquidation) for a Principal sum of Kshs. 458,119.00 being the taxed certified and allowed Advocate and client costs and a further sum of Kshs. 557,550.00 being interest accrued on the said taxed certified and allowed costs at 12% per annum from December 21, 2012 to August 31, 2021 making a grand total Judgment amount to be entered to be Kshs. 1,015,669.00 and further additional interest thereon at the rate of 14% per annum from September 1, 2021 until payment in full.
 - b. Upon Judgment being entered, a decree do issue for the same amount and the applicant, as a Decree-holder, be at liberty to execute the decree against the Respondent as the Judgment debtor;



- c. Costs of the Application to the Applicant against the respondent, together with interest thereon at the rate of 14% per annum, from the debt the Judgment is entered until payment in full;
 - d. The applicant be set at liberty to apply for any other further orders this honorable court may deem fit to grant for the performance and enforcement of the Judgment herein and or the satisfaction of the decree issued, in the interest of justice.
2. The application is premised on the grounds in its face and in the supporting affidavit of Samson Masaba Munikah sworn on August 26, 2021. According to the deponent;
 - a. there are no disputed facts or legal issues, the certificate of taxation has not been set aside or altered by any court and that the retainer is not disputed. It is stated that the Applicant is seeking Judgment for the amount allowed on August 14, 2019 in terms of the certificate of costs dated August 28, 2019 together with interest in respect of the allowed costs and the Applicant has complied with the provisions of section 48(1) of the *Advocates Act*.
 - b. that the Bill of costs was taxed on the 14th Augusts, 2019, and by dint of section 51(2) of the *Advocates Act* this court is empowered to make such orders as it thinks fit including the orders sought herein.
 - c. that Rule 7 of the *Advocates (Remuneration) Order* as amended by Legal Notice No. 159/2006, allows interest of 14% per annum to be charged by an advocate on his disbursements and costs from the expiry of one (1) month from the date of delivery of such bill to the client.
 - d. that the respondent has no reasonable defence against this claim as it has refused, neglected and/or failed to pay owing to an attitude of impunity and is guilty of abuse of the process of the court.
 - e. that the applicant is entitled to Judgment being entered for the amounts in the said certificate of costs together with interest thereon from the date of taxation until payment in full and costs of this Application.
3. The Application is opposed vide the replying affidavit of Judy Mugo sworn on March 24, 2022, wherein it is stated that;
 - a. the instant Application is incurably defective, an abuse of the court process, lacks merit and that the orders sought are incapable of being granted.
 - b. the High Court in Nairobi on July 15, 1996 made a winding up order against the Kenya National Assurance Company Limited and constituted the Official Receiver as Interim Liquidator of the estate.
 - c. subsequently, the Official Receiver took over the affairs of the company including collecting and preserving the company's assets.
 - d. the Official receiver duly appointed the Firm of M/S Munikah & Company Advocates to act for Kenya National Assurance Company Limited (In Liquidation) in HCC NO. 5613 of 1989 being Kenya National Assurance Company Limited vs Agrarian Building Society Limited.



- e. due to the excess liabilities incurred by the company, the Official Receiver could not afford to retain the Firm of M/S Munikah & Company Advocates and consequently withdrew the instructions in the aforesaid matter. As a consequence the Applicant filed the Advocate Client Bill of Costs which was allowed in its favor.
 - f. the Certificate of Costs was issued on the 28th of Augusts, 2019 in the sum of Kshs. 458,119.00. that the Applicable interest rate in liquidation matters is 6% per annum as per section 486(1) of the *Insolvency Act* and Regulation 100 of the *Insolvency Regulations*, 2016.
 - g. the Taxation Certificate has never been served upon the Official Receiver and the Applicant has not tendered any prove to this effect.
 - h. the Kenya National Assurance Company Limited (in liquidation) is insolvent and unable to pay its debts, as such the Applicant becomes a creditor who must file proof of debt form with the Official Receiver in accordance with the *Insolvency Act* 2015 which is applicable to all creditors.
 - i. the Respondent prays that the instant Application be dismissed with costs.
4. The applicant filed a response to the respondent's replying affidavit vide an affidavit of Samson Masaba Munikah sworn on or about May, 2022. It majorly reiterates the dipositions in his Supporting Affidavit and adds that;
- a. the interest rate of 6% as alluded to by the respondent relates to already proved in liquidation and not at the stage of taxation.
 - b. the respondent was served with the Certificate of Taxation vide a letter dated October 22, 2019.
 - c. on February 27, 2019, the applicant through its process server served therespondent with the Notice of Taxation dated December 24, 2018 together with the Bill of Costs and List of Documents both dated August 2, 2012and the Respondent received by affixing the official rubber stamp of the Kenya National Assurance Company Limited and signing it.
 - d. the court served the Ruling Notice dated July 27, 2019 on both parties and the applicant received on July 31, 2019.
 - e. the respondent should have attended court during taxation and if it he was dissatisfied with the decision of the Taxing Master, he would have raised an objection as per Order 11(1) and (2) of the *Civil Procedure Rules*, 2010 and not objecting in his replying affidavit.
5. On March 29, 2022, the parties were directed to canvass the application by way of written submissions. The applicant's submissions are dated may 5, 2022. the respondent's submissions are not on record.



Determination

6. I have read through the pleadings, the applicant's written submissions and the cited case and statute law in consideration of the application. The issues for determination are:-
- a. Whether the Certificate of Taxation dated August 25, 2019 should be adopted and an order be made that Judgment be entered for the applicant against the Respondents for the sum stated in the certificate to be with interest thereon costs for this application.
 - b. Whether the applicant should be awarded statutory interest accrued on the taxed advocate and client costs at the statutory rate of 14% per annum from December 21, 2021
 - c. Whether Certificate of Costs can be set aside by a mere replying affidavit as the one sworn by Judy Mugo on March 24, 2022.
 - d. Who bears the costs of this Notice of Motion application.
7. On the issue of whether the Certificate of Taxation dated August 28, 2019 should be adopted and an order be made that Judgment be entered for the applicant against the respondent for the sum in the Certificate together with interest thereon and costs, it is the applicant's case that as an advocate represented the respondent, the Official Receiver and Liquidator in HCCC No.5613 of 1989, Kenya National Assurance Co. Ltd –vs- Agrarian Building Society Limited. The respondent was served with a bill of costs but he failed to pay the applicant requisite costs.
8. The applicant was prompted to file an Advocate and client's Bill of Costs dated August 10, 2012 on December 21, 2012, which was duly served upon the Respondent, the list of documents and Notice of taxation, which it has failed to respond to and or file any objection or reference.
9. Section 51 (2) of the [Advocates Act](#) provides 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.”
- Paragraph No.7 of the Advocates Remuneration Amendment Order stipulates that:
- “An advocate can only charge interest from the expiration of one month from the delivery of the bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”.
10. In the case of [Lubullellah & Associates Advocates v NK Brothers Limited](#)[2014] eKLR, the court stated 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 that was issued on 25th November 2012”.

The holding *Lubulellah & Associates Advocates v N K Brothers Limited* (*supra*) was reiterated by the court in the case of *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co Ltd* [2021]eKLR, where it was stated 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: (i) the costs have been taxed by and certified under the hand of the taxing master by a certificate of costs; (ii) the certificate of costs has not been set aside or stayed or appealed against on a reference filed upon it; and (iii) 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. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit”.

In the instant case, service of the bill of costs has satisfactorily been proved and the certificate of taxation has not been set aside or altered and neither has a reference been filed or challenged.

11. As for the issues being raised by the respondent in respect of the interest in liquidation and whether they were served or not, they are matters that ought to have been raised before the Taxing Officer during the taxation proceedings which the Respondent did not participate in. Better still, they could be raised in a Reference or objection as contemplated under Order 11 of the *Civil Procedure rules* which the respondent has also not utilized.
12. In view of the findings on the first issue, the other issues have already been overtaken by events and it will be an academic exercise to delve into them.
13. In the upshot, the application dated August 28, 2021 be and is hereby allowed in the following terms;
 - a. Judgment be and is hereby entered for the Applicant, Munikah & Company Advocates, against the respondent, Official Receiver and Provisional Liquidator of Kenya National Assurance Company Limited (in liquidation), for a principal sum of Kshs.458,119.00, being taxed certified and allowed Advocate and Client costs which have attracted a further sum of Kshs.557,550.00 being interest accrued on the said taxed certified and allowed costs at 14% per annum from December 21, 2012 to August 31, 2021 making a grand total of Judgment amount prayed for to be entered to be Kshs.1,015,669.00: and further additional interest thereon at the same rate of 14%p.a. from September 1, 2021 until payment in full.
 - b. That upon Judgment being entered a decree do issue for the same amount of Kshs.1,015,669.00; and the applicant, as decree holder be at liberty to execute the decree against the respondent as the Judgment debtor.
 - c. That costs of this notice of motion be and are hereby awarded to the applicant as against the respondent, together with interest thereon at the rate of 14% p.a. from the date Judgment is entered until payment in full.
 - d. That the applicant be and is hereby set at liberty to apply for any other further orders this Honourable Court may deem fit to grant for the performance and enforcement of the Judgment herein and or the satisfaction of the decree issued, in the interest of justice.
14. It is so ordered



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS ...24TH .. DAY
OF ...NOVEMBER..., 2022**

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance by and for either party

Court Assistant - Simon

