



REPUBLIC OF KENYA



**F.A Badia & Company Advocates v Chemsols Ltd (Miscellaneous Application E801 & 581 of 2021 (Consolidated)) [2022] KEHC 16764 (KLR) (Commercial and Tax) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E801 & 581 OF 2021 (CONSOLIDATED)  
DO CHEPKWONY, J  
DECEMBER 20, 2022**

**BETWEEN**

**F.A BADIA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**CHEMSOLS LTD ..... RESPONDENT**

**RULING**

1. The two matters are hereby consolidated because the applications in both are between the same parties. Ideally, in both applications, the applicant seeks judgement to be entered against the respondent as taxed.
2. The application in Misc No 581 of 2021 arises from arbitration proceedings in which the applicant represented the respondent whereas the genesis of Misc No E801 of 2021 is the Chief Magistrates Court Commercial Case No 9376 of 2018.
3. In Misc Civil Application No E801 of 2021, the applicant *vide* a notice of motion application dated March 15, 2022 seeks the following orders: -
  - a. That the honourable court be and is hereby pleased to enter judgment for the advocate/ applicant against the respondent in the sum of Kshs 442,045.26 being certified costs as per certificate of taxation dated March 3, 2022.
  - b. That the honourable court be and is hereby pleased in accordance with paragraph 7 of the *Advocates (Remuneration) Order* to charge interests at nine per centum (9%) PA on disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of the bill of costs to the respondent on the specific date as hereunder; (a) chemsolsld@gmail.com & irector@chemsolsld.com; November 8, 2021 at 12:29.



- c. The respondent be condemned to pay the costs of this application.
4. On the other hand, in Misc Civil Application No 581 of 2021, the applicant *vide* a notice of motion application dated March 15, 2022 seeks the following orders: -
    - a. That the honourable court be and is hereby pleased to enter judgment for the advocate/ applicant against the respondent in the sum of Kshs 1,152,325.40 being certified costs as per certificate of taxation dated February 7, 2022.
    - b. That the honourable court be and is hereby pleased in accordance with paragraph 7 of the Advocates (Remuneration) Order to charge interests at nine per centum (9%) PA on disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of the bill of costs to the respondent on the specific date as hereunder; (a) chemsolsltd@gmail.com & irector@chemsolsltd.com; August 29, 2021 at 17:45.
    - c. The respondent be condemned to pay the costs of this application.
  5. The grounds adduced in support of the two applications are that the applicant/advocate filed bills of costs dated October 29, 2021 and August 5, 2021 in Misc Civil Application No E801 of 2021 and Misc Civil Application No 581 of 2021 respectively. According to the applicant, although the respondent was aware of the taxation, it chose not to file any response and the bills were then taxed at Kshs 442,045.26 on February 15, 2022 and at Kshs 1,152,325.40 on January 14, 2022 respectively. She avers that since the respondent has neither disputed the amounts at which the bills were taxed either through a reference or otherwise, nor has the respondent settled the sums awarded, it is imperative that a judgment be entered as sought to enable the applicant proceed with execution.
  6. The applications are supported by affidavits of Badia A Fiona, wherein she reiterates the grounds set out on its face and urges the court to allow the orders sought in the interest of justice.
  7. The respondent has opposed the applications *vide* affidavits sworn by its director, Charles Okadia Otieno on May 26, 2022. His gravaman is that the taxing officer failed to consider the respondent's submissions and taxed the bills as drafted. The deponent has explained that the respondent and its advocate on record experienced technical hitches in having the matters mapped to the judiciary's profile and as of the 18<sup>th</sup> of March, 2022, the issue had not been resolved. That, upon being mapped, the respondent realized that the timelines for filing a reference had expired and it concluded that it would address its grievances in the instant applications for execution. According to the deponent, the respondent has always been opposed to the bills of costs and the taxation and should therefore not be condemned unheard. Based on the foregoing, the respondent has urged the court to set aside the ruling of the taxing master dated February 15, 2022 so that its objection on the bill of costs is considered as guided by the principles of natural justice that every party be accorded fair hearing.

### **Analysis and Determination**

8. Having considered the two applications, the affidavits sworn in support and in rebuttal thereof, the written submissions filed on behalf of the parties as well as the authorities relied thereon. The issues that arise for determination are that: -
  - (a) Whether the two applications both dated March 15, 2022 are merited?
  - (b) Whether the firm of Julu Okadia Advocates is properly on record for the respondent.



## Whether the Applications dated March 15, 2022 are Merited

9. The applicant avers that it was instructed by the respondent to institute proceedings on its behalf in an arbitration before sole arbitrator, Mr George Murugu and in a civil case in the Magistrate's Court being Civil Case No 9376 of 2018. To procure its legal costs, the applicant lodged bills of costs dated August 5, 2021 and October 29, 2021 in respect of the two matters and rulings were delivered on January 14, 2022 and February 15, 2022 respectively. It was further submitted that the two bills of costs were taxed at Kshs 1,152,325.40 and Kshs 442,045.26 and the decision of the taxing master has neither been altered, varied, nor set aside. The applicant has added that since the respondent has failed to settle the amounts, it is imperative that judgment be entered as sought for purposes of kicking off the process of execution.
10. On the other hand, the respondent avers that the taxing master never considered its submissions notwithstanding it had notified her of the technical challenges it had experienced with the e-filing system and that by the time the matter was mapped, on the Judiciary's profile, the matters, the time for filing reference had lapsed. The respondent then resolved to canvass its grievances or issues in the present applications for execution.
11. In my understanding, the procedure for challenging the decision of a taxing master is provided for under section 51 of the [Advocates Act](#) and rule 11 of the [Advocates \(Remuneration\) Order](#). Rule 11(1) of the [Advocates \(Remuneration\) Order](#). Section 51 of the [Advocates Act](#) provides that:-
  1. Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
  2. 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.Rule 11(1) of the [Advocates \(Remuneration\) Order](#) provides that;

“Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects”
12. Thereafter, it is expected that the taxing officer forthwith records and forwards to the objector the reasons for his/her decision on those items. Then, the objector may within fourteen days from the date of receipt of the reasons, apply to a Judge by chamber summons, which shall be served on all the parties concerned setting out the grounds of his objection. Any person aggrieved by the decision of the judge upon any objection referred to such judge, under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal. On the same subject, order 11 (4) of the [Advocates \(Remuneration\) Order](#) empowers the court in its discretion to enlarge the time fixed for filing the reference.
13. The above mentioned provisions of law respectfully lay down the procedure to be followed when challenging a decision of the taxing master. In that regard, the respondent's submissions that it intended to raise its concerns or issues in the application for enforcement are misguided. No matter how arguable the respondent's concerns or issues are, it was only open for it to file a reference *vide a*



chamber summons or an application for extension of time to file the reference but not seek to challenge the taxing master's decision through a replying affidavit.

14. The above having been said, reliance is placed on the decision in the case of *Lubulellah & Associates Advocates v NK Brothers Limited* [2014] eKLR, where the court observed 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.”

15. I do not wish not to re-invent the wheel, but instead, wholly associate myself with the obiter dictum in the *Lubulellah & Associates Advocates vs NK Brothers Limited case* (supra) and reiterate that where there is no dispute of retainer, no reference filed and the certificate of taxation has not been set aside like it is in the present suit, the court has no discretion under section 51(2) of the *Advocates Act* other than entering judgment in terms of the certificate of costs. Accordingly, I find the applications dated March 15, 2022 merited and the applicant is entitled to judgment as per the respective certificate of costs.

16. Lastly, the applicant has sought to be awarded interest at the rate of nine per centum (9%) on disbursements and costs. I find it relevant to cite the provisions of rule 7 of the *Advocates Remuneration Order* which provides as follows:-

“An advocate may charge interest at 14 per cent 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, provided such claim for interest is raised before the amount of the bill has been paid or tendered in full.”

17. Since the amount taxed in the applicant's bills of costs has not been paid, i find the request to charge interests in line with rule 7 above justified and accordingly order that the amounts awarded in the respective certificates of cost shall attract interests at the rate of nine per centum (9%) per annum from the date of this ruling until payment in full.

18. In the upshot and for avoidance of doubt, judgment is hereby entered in favour of the advocate/ applicant against the client/respondent in the following terms: -

- a. Judgment be and is hereby entered for the for the applicant in the sum of Kshs 1,152,325.40 as per the Certificate of Taxation dated February 7, 2022 in Misc Civil Application No 581 of 2021.
- b. Judgment be and is hereby entered for the for the Applicant in the sum of Kshs 442,045.26 as per the Certificate of Taxation dated March 3, 2022 in Misc Civil Application No E801 of 2021.
- c. The said sums in (a) and (b) above shall attract interest at the rate of nine per centum (9%) per annum from the date of this ruling until payment in full.
- (d) Each party to bears its own costs for the two applications dated March 15, 2022.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2022.**

**D.O CHEPKWONY**



## **JUDGE**

In the presence of:

M/S Bandia counsel for Applicant

No appearance for and by respondent

Court Assistant - Sakina

