



Bruce Odeny & Co Advocates v MCtough (Environment and Land Miscellaneous Application E018 of 2022) [2023] KEELC 19209 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2022**

E ASATI, J

JULY 27, 2023

BETWEEN

BRUCE ODENY & CO ADVOCATES APPLICANT

AND

WILIAM ROMAN MCTOUGH RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated October 24, 2022 which seeks for orders, inter alia, that the certificate of costs issued on October 14, 2022 be converted into a decree and judgement together with interest at court rates until payment in full. It also seeks for an order that costs of the application be provided for.
2. The grounds of the application were that the applicant filed its advocate-client bill of costs dated May 23, 2022 for taxation and determination of its fees. That the bill was taxed by the taxing master of the court on October 6, 2022 and allowed in the sum of Kenya Shillings Seven Hundred and Three Thousand Eleven Shillings and Seventy Eight Cents only (Kshs 703,011.78). That a certificate of costs was issued to that effect on the October 14, 2022. That the certificate of costs has not been challenged or set aside.
3. The application was supported by the averments in the Supporting Affidavit sworn on October 24, 2022 by Bruce O. Odeny Advocate. To the Supporting affidavit was annexed a copy of certificate of costs marked "BOO1".
4. The application was opposed vide the Replying Affidavit sworn by William Roman MCtough on February 23, 2023 wherein the Respondent deposed that the certificate of costs sought to be made a decree had been compromised and overtaken by the operation of an order in Kisumu High Court Commercial case No.E005 of 2022 *Willian Roman MCtough Vs Bruce Odeny & Company Advocates*. That the application was therefore res judicata and cannot form the basis of a concurrent order/decree



or certificate. To the Replying Affidavit was attached and marked as WRM1 a copy of the order. There is however, no evidence to show that the order is related to the matter herein or that the Respondent performed the order by paying the claim herein.

5. Section 51(2) of the *Advocates Act* empowers the court to make an order that judgement be entered for the sum certified to be due with costs. I have read and considered the application. I have also read the court record generally. The applicant's fees was taxed by the Deputy Registrar of the court at Kenya shillings seven hundred and three thousand eleven shillings and cents seventy-eight only (Kshs 703,011.78/=) and a certificate of taxation dated October 14, 2022 issued. I have read the ruling dated October 6, 2022 by the Deputy Registrar on the taxation. There being no evidence of settlement of the taxed costs, the Certificate of Costs having not been reviewed or varied, I find that the application is merited. I allow the application and hereby enter judgement in favour of the applicant on the basis of the certificate of costs dated October 14, 2022 for Kenya shillings seven hundred and three thousand eleven shillings and cents seventy-eight only (Kshs 703,011.78/=) and interest thereon at court rates. Costs of the application are awarded to the applicant.

Orders accordingly

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 27TH DAY OF JULY 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Akinyi for the Applicant/Advocate

Mukoya for the Respondent/Client

