



Njeru Nyaga & Co Advocates v Thome V Residents Welfare Association (Miscellaneous Application E039 of 2021) [2023] KEELC 19287 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19287 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E039 OF 2021**

**MD MWANGI, J
JULY 27, 2023**

BETWEEN

NJERU NYAGA & CO ADVOCATES ADVOCATE

AND

THOME V RESIDENTS WELFARE ASSOCIATION CLIENT

RULING

Background

1. In this matter, the Advocate's Bill of Costs dated March 5, 2021 was taxed on the May 19, 2022.
2. The application before me is the Advocate's application dated November 9, 2022 seeking entry of judgement for the taxed costs of Kshs 845,486.00 /= with costs of the application. The Applicant also prays for interest at the rate of 14% per annum from May 19, 2022.
3. The application is premised on the grounds on the face of it and supported by the Affidavit, one Martin Njeru Nyaga sworn on November 9, 2022. He deposes that the Advocate's Bill of Costs was taxed at a sum of Kshs 845,486.00/= on May 19, 2022 and the said taxed costs have neither been set aside nor varied by the Honourable Court.
4. Though the application was duly served on the Respondent, the Respondent did not file a response to the motion. However, during the hearing of the application, Counsel for the Respondent averred that their only objection was only on the prayer for interest at 14% from May 19, 2022 as prayed for in the application. She submitted that it is contrary to the provisions of the *advocates Act*. That though the ruling was on May 19, 2022 they only received it sometimes in July of 2022. That is the time then that interest should start being charged.



Issues for Determination

5. Having perused the Notice of Motion application dated November 7, 2022 together with the supporting affidavit, I am of the view that the only issue for determination is whether the court should enter judgment in favour of the Advocate/Applicant as prayed.

Determination

6. The jurisdiction of this court in respect to Advocates bills of costs emanates from the provisions of Section 51 of the *Advocates Act*. Section 51(2) of the *Advocates Act* provides that:

“(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.”

7. In the instant case, no Certificate of Costs has been issued yet. The certificate of costs is the formal expression of the ruling of the taxing master on certified costs. In the absence of the Certificate of Costs, the application herein is premature. This court then has no basis to enter judgement in favour of the Advocate/Applicant. Its jurisdiction is triggered by the issuance of the certificate of costs. That being the case, the application by the Advocate/Applicant is hereby struck-out. There shall be no orders as to costs however since the Respondent had not filed any response in opposition to the application.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Kirui holding brief for Njeru Nyaga the Advocate/Applicant.

No appearance by the Client/Respondent.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

