



**Samnary v Agricare East Africa Limited (Miscellaneous Civil Cause E1025 of 2020)
[2021] KEHC 374 (KLR) (Commercial and Tax) (16 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL CAUSE E1025 OF 2020**

EC MWITA, J

DECEMBER 16, 2021

BETWEEN

MOHAMED & SAMNARY APPLICANT

AND

AGRICARE EAST AFRICA LIMITED RESPONDENT

RULING

1. The applicant filed a notice of motion dated 17th March 2021 brought under section 51(2) of the *Advocates Act* and rule 7 of the Advocates Remuneration Order for judgment in terms of the certificate of costs dated 10th February 2021.
2. According to the grounds on the face of the application, the applicant's bill of costs was duly taxed and a certificate of taxation issued by the taxing officer. There are no valid outstanding issues on costs to be determined and therefore the applicant is entitled to have judgment entered in their favour in terms of the certificate of costs.
3. The application is further supported by an affidavit by Zul Mohamed, advocate, sworn on 17th March 2021. He deposed that the applicant's bill of costs was taxed and allowed in the sum of Kshs. 771,783 on 20th September 2020. A certificate of costs was issued on 10th February 2021. The respondent had been served with the bill of costs through its advocates on 3rd September 2020. After taxation, the respondent was notified of its obligation to pay interest on the taxed costs through letter dated 15th March 2021 again through its advocates but did not pay the costs.
4. According to the applicant, the respondent's notice of objection to taxation dated 16th February and filed on 17th February 2021 is a nullity and of no legal consequence since it was lodged long after the time allowed. The deponent pointed out that the respondent and or its advocate never attended court during taxation and could not therefore question the taxing officer's decision.



5. The respondent did not file a replying affidavit and none has been traced on record or even on the portal.
6. When this application came up for hearing the applicant was represented by counsel but the respondent's counsel was absent though served. The applicant's counsel relied on their written submissions and urged the court to allow the application as prayed.
7. In the written submissions dated 28th July 2021, the applicant argued that the bill of costs was taxed and a certificate of costs issued. Even though that certificate has not been set aside, the respondent has not paid the taxed costs. The applicant also argued that the taxing officer's decision having been delivered on 20th November 2020, the respondent's notice of objection dated 16th February 2021 and filed on 17th February 2021 is of no legal effect to their certificate of taxation since it was filed out of time.
8. He further asserted that the notice of objection sought reasons on all the items in the bill of costs and yet the ruling contained reasons on all the items.
9. The respondent filed written submissions dated 9th August 2021. It was submitted that the application is premature and an abuse of the court process since there is an objection dated 16th February 2021 and filed on 17th February 2021 against taxation. According to the respondent, the notice of objection was filed within time as required by rule 11(1) of the [Advocate Remuneration Order](#). It was the respondent's case that, the certificate of taxation was issued on 10th February 2021 while their notice of objection was filed on 17th February 2021, thus the application is premature.
10. The respondent argued that allowing the present application would amount to barring the respondent from receiving the rationale (reasons) behind the taxing officer's decision on the contested items 1 to 252 (all items in the bill of costs) otherwise the respondent will be condemned unheard.
11. The respondent maintained that it is a principle of law that a party should not be condemned unheard. The respondent argued that preliminary issues relating to a bill of costs cannot be raised before a taxing officer but must be brought before the Judge for adjudication. The respondent relied on [Kenya Pipeline Company Limited v Nyamogo & Nyamogo Advocates \[2007\] eKLR](#), that a client can file a suit to impeach an agreement which is the basis of a taxation before a taxing officer. It urged that the application be dismissed with costs.
12. I have considered the reference and submissions by parties. I must point out from the outset that the respondent did not file a replying affidavit to the reference but only filed submissions to the reference.
13. The taxing officer allowed the applicant's bill of costs at Kshs. 771,783 and issued a certificate of taxation dated 10th February 2021. The applicant has therefore applied for judgment in terms of that certificate of costs. According to the applicant, the respondent has refused to pay the taxed and certified costs forcing them to move the court for judgment. It is the applicant's case that there is no good reason why the court should not enter judgment in their favour as prayed.
14. The respondent has submitted that there is an objection to the taxation and has sought the taxing officer's reasons to enable them file a reference. According to the respondent, it is dissatisfied with the taxing officer's decision on all items in the bill of costs and, therefore, it will challenge that decisions accordingly. The respondent maintains that the application is premature since it has filed an objection dated 16th February 2021 and filed on 17th February 2021, thus the application should not be allowed.
15. I have given due consideration to the application and arguments by both parties. The respondent did not file a replying affidavit to the application but only filed submissions. Submissions are not a response



to the application. The applicant's depositions and averments remain uncontroverted. The argument that the purported objection was filed out of time and therefore a nullity has also not been challenged.

16. The record is clear that the decision of the taxing office was delivered on 20th November 2020. Only the certificate of taxation was issued on 10th February 2021. The request for reasons was made on 17th February 2021, way out of the fourteen days allowed by law. Even then, the respondent did not take steps after filing an application for stay of execution. As it is, there is nothing stopping this court from considering the applicant's application.

17. 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.

18. There is no dispute that the taxing officer rendered a decision on the applicant's bill of costs and certified the costs as due and payable to them. That certificate of costs has not been set aside. There is no issue of retainer pending before this court. The applicant stated that the respondent and its advocates were aware of that the bill of costs would be taxed but did not attend, and that after taxation the respondent was asked through its advocates to pay the taxed costs but failed to do so. These facts were not controverted by the respondent. The respondent did not also attend court during the hearing of this application despite service.

19. In the circumstances, I find that this application is for allowing. Consequently, the application dated 17th March 2021 is allowed as prayed. The applicant shall also have costs of this application.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF DECEMBER 2021

EC MWITA

JUDGE

