



Chege Kibathi & Co. Advocates v Embakasi Ranching Company Limited (Miscellaneous Application E147 of 2022) [2023] KEELC 18966 (KLR) (25 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18966 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E147 OF 2022**

**MD MWANGI, J
JULY 25, 2023**

BETWEEN

CHEGE KIBATHI & CO. ADVOCATES ADVOCATE

AND

EMBAKASI RANCHING COMPANY LIMITED CLIENT

RULING

1. In this matter, the Advocate's Bill of Costs dated August 3, 2022 was taxed on August 20, 2022 and the Certificate of Taxation dated January 17, 2023 subsequently issued.
2. The application then before me is the Advocate's application dated January 30, 2023 seeking entry of judgement for the taxed costs of Kshs 465,690.30/=. The Applicant also prays for interest at the rate of 14% per annum from the date of issue of the certificate of costs until payment in full.
3. The application is premised on the grounds on the face of it and supported by the Affidavit of one Dennis Juma sworn on January 30, 2023. He deposes that the Advocate's Bill of Costs was taxed at a sum of Kshs 465,690.30/=. Prior to the taxation, the Advocate had served the Client/Respondent with a Notice of Taxation but the Client did not appear when the matter came up for taxation. The Taxing Master proceeded to tax the Bill of costs and subsequently issued a certificate of taxation.
4. The Certificate of Costs has neither been settled nor set-aside and the Respondent has not filed a Reference regarding the said taxation despite being served with the same. It is therefore in the interest of justice that the application is allowed. Though the application was duly served on the Respondent and an affidavit of service filed, it did not file a response to the said application.

Court's directions

5. Counsel for the Applicant opted not to file written submissions. He relied on the grounds on the face of the application and the Supporting Affidavit.



Issues for Determination

6. Having perused the Notice of Motion application dated January 30, 2023 together with the supporting affidavit thereof, 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

7. It is clear that the Advocate bill of costs dated August 3, 2022 was taxed on January 17, 2022 and allowed as against the Respondent in the sum of Kshs 465,690.30/-. A certificate of taxation was subsequently issued on January 17, 2023. The taxation of the Advocate's bill of costs has not been challenged by the Client in accordance with the provisions of Rule 11 of the *Advocates Remuneration Order*.
8. Section 51 of the *Advocates Act* provides:
 - “(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.”
9. It is clear from the subsection (2) that the certificate of costs once issued by the Taxing officer is final unless set a side or altered by the court.
10. In the case of *Lubulellab & Associates Advocates v N. K. Brothers Limited* [2015] eKLR 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. An applicant is not required to file suit for the recovery of costs”.
11. That being the case herein, the court enters judgement for the Applicant against the Respondent for the sum of Kshs 465,690.30/=.
12. On the aspect of interest however, this court will be guided by the court of Appeal decision in *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR. The Court of Appeal while considering an appeal from the decision of the High Court held that: -
 - “As such, the rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the bill or fee note. The learned judge's reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection”.



13. The court went further to consider the claim of interest after taxation of an Advocate -client bill of costs and held that: -

“Additionally, it is distinctive that a review of the applicant’s Bill of Costs does not disclose that the applicant included a charge for “interest at 14% per annum on his (her) disbursements and costs...” in the Bill of Costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure”.

14. I have perused the Bill of Costs that was drawn, filed and presented by the Applicant herein. The Applicant did not include a charge for interest at 14% per annum in the bill of costs. Accordingly, guided by the above cited binding authority, Rule 7 cannot therefore apply in this case. I am left with then with the discretion under the provisions of section 26 of the Civil Procedure Act.

15. There is no indication on record when the certificate of taxation was served, if at all. Exercising this court’s discretion under Section 26 of the civil procedure Act, I will award the Applicant interest at the rate of 14% per annum but from March 16, 2023 (being the date when the Applicant first served the Respondent with the Mention Notice for this application as confirmed by the Return of Service filed on March 29, 2023) until payment in full.

16. The Advocate/Applicant shall also have the costs of this Application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Wahome holding brief for Juma for the Advocate/Applicant.

No appearance for the Respondent.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

