



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. 9 OF 2018**

**KOCEYO & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY.....RESPONDENT**

**RULING**

1. By way of a Notice of Motion dated 12<sup>th</sup> July, 2018 brought under Order 51 Rule 1, Section 51 (2) of the Advocates Act and Section 3A of the Civil Procedure Act, the Applicant seeks the following orders:

- a) THAT judgment be entered against the Respondent for Kshs. 230, 158.50/= with interest at the rate of 14% p.a from 4<sup>th</sup> July, 2018 till payment in full.
- b) THAT costs of this application be borne by the Respondent.

The application is supported by the grounds set out therein and those in the Supporting Affidavit of TITUS KOCEYO sworn on 12<sup>th</sup> July, 2018.

2. The Applicant alleges that the Respondent was its client and a Certificate of Taxation was issued in favour of the Applicant as against the Respondent.
3. The Applicant contends that the Respondent has failed to pay the taxed costs, therefore there is need to force the Respondent to pay the same.
4. It is the Applicant's case that the Respondent has not filed an application for stay or variation of the Certificate of Taxation hence it is in the interest of justice and fairness that this application is allowed.
5. The Respondent opposed the application by way of a Replying Affidavit sworn by PAULINE KAHIGA-WAITITU on 5<sup>th</sup> October, 2018.
6. The Respondent avers that there is legal and factual justification for the delay in payment of the taxed costs. In support of this assertion, the Respondent claims that it is in the process of seeking a general moratorium against its creditors who are demanding payment of costs and pursuant to **Petition No. 11 of 2018; Nairobi City County & Another v. The Honourable Attorney General & Others**, and is in the process of issuing notices and possible joinder of all potential creditors as per the orders of the court in that matter.
7. The Respondent alleges that it is willing to settle the amount claimed but subject to verification and ascertainment of amounts remaining unpaid to avoid any double payment.

**Submissions**

8. The Applicant filed its submissions on 15<sup>th</sup> October, 2018. No submissions were filed on behalf of the Respondent.
9. Ms. Merichi, Counsel for the Applicant submitted that a Certificate of Costs was issued in favour of the Applicant against the Respondent and no application for setting aside, staying or varying the taxed costs has been filed by the Respondent. Therefore, Counsel opined that there is need to enforce the taxed costs through this application. Counsel referred the court to the case of **Lubulellah & Associated v. N.K Brothers Limited [2014]eKLR** where the court held 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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation...”**

10. On the issue of interest at 14%p.a, Ms. Merichi contended that Rule 7 of the Advocates Remuneration Order provides that an advocate may charge interest at 14%p.a for his disbursements and costs. Counsel urged the court to find that no steps were taken by the Respondent to contest the taxed costs and allow this application.

### **Determination**

11. The only issue for determination is whether judgment should be entered against the Respondent for Kshs. 230, 158.50/= with interest at the rate of 14% p.a from 4th July, 2018 till payment in full. The Applicant contends that a Certificate of Taxation was issued against the Respondent for the sum of Kshs. 230,158.50/= and the Respondent has not taken any steps to set aside, stay or vary the orders of the taxing master. Therefore, this court should enter judgment in favour of the Applicant.

12. I have carefully read through the application and the annexed documents. A Certificate of Taxation was issued on 6<sup>th</sup> July, 2018 against the Respondent for the sum of Kshs. 230, 158.50/=. The said Certificate arose from Judicial Review No. 610 of 2016 in which the Applicant represented the Respondent. The Respondent contested the Advocate-Client Bill of Costs drawn by the Applicant on 2<sup>nd</sup> February, 2018. Subsequently, I have considered the said Bill of Costs as against the contentions of both parties and vide ruling dated 4<sup>th</sup> July, 2018, where the taxing master taxed the bill of costs at Kshs. 230,158.50 and a Certificate of Taxation was later issued on 6<sup>th</sup> July, 2018.

13. The Respondent opposed this application by claiming that they were seeking a general moratorium against its creditors who were demanding costs vide **Petition No. 11 of 2018; Nairobi City County County & Another v. The Honourable Attorney General & Others**. According to the Respondent, the said Petition will determine the best solution in relation to handling of costs demanded from the Respondent. Further, the Respondent alluded to needing more time to ascertain the amounts that are unpaid to avoid double payment.

14. I do note that despite the reasons given above, the Respondent did not seek to stay the ruling of the taxing master issued on 4<sup>th</sup> July, 2018 pending determination of **Petition No. 11 of 2018; Nairobi City County County & Another v. The Honourable Attorney General & Others**.

15. Section 51 (2) of the Advocates Act provides as follows:

**"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."**

It is under this Section that the Applicant is seeking that judgment be entered for the sum taxed as costs.

16. I do not find any reason why judgment should not be entered as requested by the Applicant. The Respondent in this case despite giving reasons as to why this application should not be allowed, has not formally filed any application to set aside, stay or vary the orders of the taxing master. As I understand it, the Respondent in its replying affidavit does not seem to dispute the bill of costs as taxed by the Taxing Master. In **KTK Advocates v Baringo County Government [2017] eKLR**, the Court observed as follows:

**“[32]. 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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent for the taxed sum indicated in the Certificate of Taxation.**

**[33]. The above section in my understanding, gives the court the jurisdiction to enter judgment for taxed costs where conditions are satisfied. The first condition is that there must be a certificate of the taxing officer by whom the bill has been taxed which certificate has not been set aside or varied by the court. Secondly there must be no dispute as to the retainer. If those two conditions are satisfied, the court has a discretion to enter judgment for the sum certified to be due with costs. (emphasis added)**

17. If the court were to adopt the principles enumerated above, the court would find that both have been satisfied. There is a Certificate of Taxation on record issued on 6<sup>th</sup> July, 2018. The said Certificate of Taxation has neither been set aside nor varied by the court. Also, there is no dispute as to the retainer.

18. On the issue of interest, the Applicant submitted that Rule 7 of the Advocates Remuneration Order allows an advocate to charge an interest of 14%p.a for his costs. The Respondent did not respond to this issue. This being the case, I find no reason as why the Applicant should not be allowed to charged interest at 14%p.a for the taxed costs.

19. Accordingly the application dated 12<sup>th</sup> July, 2018 is hereby allowed. Orders are hence issued as follows:

a) THAT judgment be and is hereby entered in favour of the Applicant against the Respondent for Kshs. 230, 158.50/= with interest at the rate of 14% p.a from the date of taxation.

b) THAT the Respondent shall bear the costs of this application.

Dated, Signed and Delivered in Nairobi this 29<sup>th</sup> Day of March 2019.

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D. CHEPKWONY

JUDGE.