



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 17 OF 2018

KOCEYO & COMPANY ADVOCATES.....APPLICANT

VERSUS

NAIROBI CITY COUNTY.....RESPONDENT

RULING

The Application

1. Nairobi City County (the Respondent herein) was a client of Koceyo & Company Advocates (the Applicant herein), and a Certificate of Taxation was issued in favour of the Applicant against the Respondent on 20th June 2018 for taxed costs of Kshs 575,451.06/=. The Applicant claims that the Respondent has declined to pay the taxed costs, and he therefore filed the instant application by way of a Notice of Motion dated 22nd June 2018 seeking orders that judgment be entered against the Respondent for Kshs 575,451.06 with interest at the rate of 14% p.a. from 13th June 2018 until payment in full.

2. The application was supported by a supporting affidavit sworn on 22nd June 2018 by Titus Koceyo, the managing partner of Koceyo & Company Advocates. The Applicant averred that no application for stay, variation or setting aside of the Certificate of Taxation has been filed by the Respondent or such orders made. He annexed a copy of the Certificate of Taxation.

The Response

3. The Respondent responded to the said application by way of a replying affidavit sworn on 16th October 2018 by Pauline Kahiga-Waititu, its County Secretary and Head of County Public Service. According to the Respondent, there is a legal and factual justification for the delay in paying the owed sums to the Applicant, as the Respondent is not well furnished with the status of payment of the pending decrees, and needs time to undertake an internal audit.

4. Furthermore, that the Respondent is in the process of seeking a general moratorium against the creditors who are demanding costs, and is in the process of issuing notice to and possible joinder of all creditors as per the orders given in **Petition 11 of 2018: Nairobi City County & Another vs The Attorney General**. The Respondent stated that it is willing to settle the pending decrees, however that it needs the requisite approval and appropriation made, and also needs time to ascertain the amounts remaining unpaid.

The Determination

5. The parties were directed to file submissions on the two applications. The Applicant filed submissions dated 5th December 2018, while Letangule & Company Advocates filed submissions dated 5th November 2018 for the Respondent.

6. The Applicant relied on the decision in **Lubulellah & Associated vs N.K. Brothers Ltd, H.C Misc App. 52 of 2012** that once a Certificate of Costs is issued and there is no order to set it aside or alter it, then no other action is required from the Court save to enter judgment. On the interested sought of 14 % per annum, the Applicant relied on Rule 7 of the Advocates Remuneration Order. Lastly, the Applicant cited various decisions including **Kithi & Co. Advocates vs Menengai Downs Limited, (2015) eKLR**, and **Muema Kitulu & Co. Advocates vs Obadiah Kuvivya, (2011) eKLR** that a Certificate of Costs cannot be set aside or re-opened through a replying affidavit.

7. The Respondent on the other hand reiterated its averments set out in the foregoing in its submissions, and relied on the decision in **Wachira Nderitu, Ngugi & Company Advocates vs Town Clerk City Council of Nairobi, (2015) e KLR** for the proposition that it ought to be given some breathing space to arrange its finances and settle the sum due herein in light of its debt portfolio as against its finance resources.

8. The issue for determination in the instant application is whether judgment should be entered against the Respondent for the taxed costs due to the Applicant. It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is

if the same has been set aside or altered, or where there is an issue with retainer. Under section 51(2) of the Advocates Act, this Courts power to enter judgment in the Advocates' favour on the taxed costs in such circumstances, and the said section 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”.

9. This position has been upheld in various cases including Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited, (2007) e KLR, Dally and Figgis Advocates vs Homelex Limited (2013) eKLR and Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Ltd (2012) eKLR. In addition Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 % until payment in full.

10. The Respondent did not bring any evidence of any pending dispute as regards the amount of taxed costs or of the Applicant's retainer. The arguments it raised are on its ability to pay the taxed costs, due to reasons of the need to clarify the amount due and/or availability of funds. These are not legal grounds but practical grounds which are beyond the remit of this Court to deal with, and outside the grounds set out in the applicable law on entry of judgment for costs as shown in the foregoing. The issues raised by the Respondent can in any event still be communicated to the Applicant in an effort to seek a way forward in terms payment of the taxed costs, independently of any orders made by this Court.

11. The finality of the taxed costs and Certificate of Costs issued to the Applicant is therefore not in dispute, and the Applicant is thus entitled to judgment. In the premises I find merit in the Applicant's Notice of Motion dated 22nd June 2018 and grant the following orders:

I. Judgment is entered for the Applicant against the Respondent for taxed costs of Kshs 575,451.06, as certified in the Certificate of Taxation dated 20th June 2018, with interest at 14% per annum from the date of taxation until payment in full.

II. The Applicant shall have costs of the Notice of Motion dated 22nd June 2018 of Kshs 20,000/=.

12. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2019

P. NYAMWEYA

JUDGE