



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**MISC. APPLICATION NO. 369 OF 2017**

**NJERU NYAGA & CO. ADVOCATES.....ADVOCATE/APPLICANT**

**VERSUS**

**PAULINE NGIGI T/A SAFARI MARKET TOURS.....CLIENT/RESPONDENT**

**RULING**

1. This ruling relates to the application dated 3<sup>rd</sup> December 2018 in which the applicant herein M/S Njeru Nyaga & Co. Advocates seeks the following orders:

- 1. That this Honourable court be pleased to enter judgment against the respondent for the sum of Kshs 113,817/- being certified costs due.***
- 2. That the taxed costs shall attract interest at the rate of 14% per annum from 30<sup>th</sup> March, 2016 until payment in full.***
- 3. That the costs of this application be provided for.***

2. The application is brought primarily under Section 51(1) and (2) of the Advocates Act and is premised on the grounds that:

- 1. That the Applicants Bill of Costs dated 29<sup>th</sup> August, 2017 was taxed on 21<sup>st</sup> May 2018 by the Hon. TANUI, ELIZABETH CHEPKOECH (DR) and kshs 113,817/- awarded to the applicant.***
- 2. A certificate of Taxation dated 20<sup>th</sup> July 2018 was issued by the Taxing Officer.***
- 3. The said certificate has neither been set aside nor varied by the Honourable court.***

3. The respondent opposed the application through her replying affidavit sworn on 20<sup>th</sup> February 2019 in which she avers that even though the applicants bill of costs was taxed on 21<sup>st</sup> May 2018 as shown in the certificate of costs dated 20<sup>th</sup> July 2018, she objected to the taxation and requested the Taxing Master to provide reasons for the taxation. She further avers that the Taxing Master has not yet furnished her with the reasons for the taxation so as to enable her file a reference and that the instant application should be dismissed or stayed in order to await the outcome of the intended reference.

4. I have carefully considered the instant application together with the respondent's replying affidavit and the submissions of counsel for both parties.

5. The main issue for determination is whether the applicant has made out a case for entry of judgment against the respondent for a sum of kshs 113,817 being the certified costs due. It was not disputed that the applicants bill of costs was taxed on 21<sup>st</sup> May 2018 and Kshs 113,817 awarded to the applicant. It was also not disputed that a certificate of taxation dated 20<sup>th</sup> July 2018 was issued by the said taxing officer and that the said certificate has not been varied or set aside.

6. The respondent's reason for opposing the application is that the Taxing Master has not responded to her request for reasons for the taxation as contained in her advocate's letter dated 23<sup>rd</sup> May 2018.

7. I have perused the court file and noted that contrary to the respondents claim that the Taxing Master did not respond to her request for reasons, on 1<sup>st</sup> February 2019, the Deputy Registrar wrote to the respondents counsel informing them that the reasons for the taxation are

well within the ruling.

8. In view of the response by the Deputy Registrar to the request for reasons, I find that the respondent's claim that no reasons have been given for the taxation is not factual or correct.

9. I have also perused the impugned ruling of the Taxing Master dated 21<sup>st</sup> May 2018 and I note that the reasons for the taxation are clearly spelt out in the ruling.

10. Under the above circumstances and considering that a certificate of costs has been issued in favour of the applicant, I find that the instant application is merited and is therefore allowed as prayed. I make no orders as to costs.

**Dated, signed and delivered in open court at Nairobi this 20<sup>th</sup> day of June, 2019**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Miss Kendi for Nyangau for respondent

Mr. Karanja for Njeru for applicant.

Court Assistant - Ali