



Muregi Okere Advocates v Ikumu (Environment and Land Miscellaneous Application E036 of 2023) [2023] KEELC 20960 (KLR) (24 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20960 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E036 OF 2023
NA MATHEKA, J
OCTOBER 24, 2023

BETWEEN

MUREGI OKERE ADVOCATES ADVOCATE

AND

BEATRICE IKUMU CLIENT

RULING

1. The application is dated 31st May 2023 and is brought under section 51 (2) of the *Advocates Act*, cap 16 Laws of Kenya, and paragraphs 4 and 7 of the Advocates Remuneration (Amendment) Order 2014 seeking the following orders;
 1. That the Honorable Court be pleased to order that the Certificate of Costs issued to the Advocate/Applicant as against the Client/ Respondent, be converted into a Judgment and Decree of this Honorable Court and consequently Judgment be entered for the Advocate/ Applicant against the Client/Respondent for the sum of Kshs.947,575/-
 2. That Interest does accrue on the sum of Kshs.947,575/-, at the rate of 14% per annum, with effect from 20th September 2022 until payment is made in full.
 3. That costs be awarded to the Advocate/Applicant.
2. It is based on the grounds inter alia that the Client/Respondent was served with a fee note on 23rd May 2022 and a Demand to settle the fee note was also served on the Client/Respondent on 14th June 2022. The Client/ Respondent was served on 19th August 2022 with a Bill of Costs dated 12th August 2022 together with a Notice of Taxation dated 16th August 2022. The Client/Respondent failed to respond to the Notice of Taxation dated 16th August 2022 and the Bill of Costs dated 12th August 2022 (the Bill of Costs). The Bill of Costs was heard on 16th November 2022 and by a Ruling delivered on 9th December 2022 the bill was taxed and certified at Kshs.947,575/-. The Client/Respondent has yet to



honor the fee stipulated in the Certificate of Costs given on the 9th December 2022 and issued on 7th March 2023. The Advocate/Applicant is entitled to interest on fees as stipulated under paragraph 7 of the Advocates (Remuneration) Order.

3. The Respondent stated that the Advocate/Applicant was retained whereby the instruction were not to represent the Client/Respondent in the subject sale herein but to only limit themselves to preparing an agreement for sale and processing of capital gain tax and no further representation would be required as from the Applicant.
4. That fees of the Applicant in this case whereby an agreement was made and the said agreed fees paid in full, the same is not liable to be subjected to taxation hence the Applicant is not entitled to the prayers sough herein as he seeks to enforce orders emanating from taxation procedure.
5. That he made full payments on the agreed fees and the Applicant is not entitled to any further payment. That the Applicant has not come to this court with clean hands as he choose to violate the charging practices set out under the Advocates (Remuneration) Order and the Advocate's Act Cap 16. That this Honorable Court has jurisdiction over this matter and a duty to see that justice is done and exercising its discretion while dismissing the Advocate/Applicant's application dated 31st May, 2023 for it is a waste of this Honorable court's time.
6. This court has considered the application and the submissions therein. The procedure for the challenge of a Taxing Master's decision is provided under Rule 11 of the Advocates Remuneration Order which provides as follows:
 - (1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
7. After this is brought before the Judge the principles of varying or setting aside a Taxing Master's decision set in. The cases of First American Bank of Kenya vs Shah and Others (2002) EA 64 and Joreth Ltd vs Kigano and Associates (2002) 1 EA 92, state that the Taxing Master's judicial discretion can only be interfered with when it is established that the there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law.
8. I have carefully perused the court record and considered the rival contentions herein. It is clear from the record that during the hearing of the Advocates/Client Bill of Costs, the Respondent never attended to defend the same. However she has never protested about the retainer. In fact, in her written submissions filed she submitted on the scope of the instructions without raising any objection to the issue of retainer. She even submitted that the parties had agreed on instruction fees which she states she paid in full. In paragraph 6 of her replying affidavit, she stated that;

That upon receipt of the letter dated 23rd May, 2022 , they had a discussion with the Respondent whereby it was agreed since he had not processed capital gains compliance which forced him to procure services from an accountant by the Name David Sumba of whom Kshs.30,000/- had been paid to through his agent one Mr. Dan Osiya for purpose of processing the capital gains tax compliance the same would be deducted from the fees he was demanding where the same day he paid the balance of Kshs. 140,000/- being a full and



final settlement of the fees agreed upon. Annexed and marked "BI-I " as a Bundle is CGT acknowledgement and various MPESA transaction records".

9. In view of the foregoing I find that the retainer was not disputed. I therefore return that the application before the court. 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."

10. Similar position was reiterated in the case of *Musyoka & Wambua Advocates vs Rustam Hira Advocate* (2006) *eKLR* where it was held: -

"Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit....."

11. The procedure provided in section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of Advocate-Client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the Advocate. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.

12. In the present case, there is no dispute of retainer of the Advocate to act for the Respondent for which costs were taxed. The Certificate of Costs has not been set aside or altered. I have not been shown any reference against the decision of the taxing master herein. Accordingly, I find the application by the Advocate/Applicant merited. I hereby enter judgment for the Advocate in terms of the Certificate of Costs dated 9th December 2022 and issued on 7th March 2022.

13. The Applicant is further awarded costs plus interest on the judgment at the rate of 14% from 7th March 2022 pursuant to rule 7 of the *Advocates (Remuneration) order*. The said Rule provides:

"An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiry to one month from the delivery of his bill to the Client, providing such claim for interest is raised before the amount has been paid or tendered in full."

14. The Applicant has prayed for interest from 20th September 2022. The Respondent has not denied knowledge of the amount of costs issued on 7th March 2022. I have also considered the fact that, there was no unreasonable delay by the Applicant before filing the application for judgement after the taxation of his bill by the Deputy Registrar of this court. Consequently, I award interest at 14% from the 7th March 2022. There will be no order as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF OCTOBER 2023.



N.A. MATHEKA
JUDGE

