



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC CIVIL APPLICATION NO. 573 OF 2017**

**IN THE MATTER OF: THE ADVOCATES ACT CAP 16 LAWS OF KENYA**  
**IN THE MATTER OF: TAXATION OF COSTS BETWEEN CLIENT AND**  
**ADVOCATE ESHUCHI & ASSOCIATES ADVOCATES.....APPLICANT**

**VERSUS**

**DAVID WAIGANJO KIGWE.....RESPONDENT**

*(Being the Costs Arising Out of High Court of Kenya at Nairobi Commercial and Tax Division Civil  
Suit No. 83 of 2014)*

**RULING**

The Applicant filed a Notice of Motion dated 9<sup>th</sup> October, 2017 seeking that;

- a) The Honourable Court be pleased to enter judgment and decree in favour of the Applicant for the sum Kshs. 541,549/= as per the certificate of taxation of costs together with interest at 14% p.a from 24<sup>th</sup> day of March, 2016 until payment in full.
- b) The Costs of this Application be borne by the Respondent.

The Application is supported by the affidavit of George Eshuchi and on the grounds that the Respondent had retained the Applicant to defend him in a suit whose subject matter was Kshs. 10,000,000/=. The Applicant avers that he entered appearance and filed a defence after which the Respondent withdrew instructions. The Applicant therefore filed a bill of costs which was taxed at Kshs. 561,549/= in a ruling dated 24<sup>th</sup> March, 2016. It is deponed that the Respondent was dissatisfied with the ruling and filed a reference against the same seeking to set aside the decision of the taxing master which reference was dismissed vide a ruling dated 22<sup>nd</sup> June, 2017 and a certificate of costs was issued on 6<sup>th</sup> September, 2017.

The application is opposed vide a Replying Affidavit dated 26<sup>th</sup> February, 2018 sworn by the Respondent. The Respondent deponed that he had instructed his advocate to settle this matter at Kshs. 150,000/= as there was an agreement of Kshs. 160,000/=. The Respondent acknowledged that he had filed a reference against the taxation of Kshs. 561,549 which application was dismissed. However, he avers that the Applicant has never served him or his Advocate with the certificate of taxation to demand payment. Therefore he depones that the application is premature, an abuse of court process and it ought to be dismissed. The Application was canvassed orally in court.

I have considered the Affidavits of the parties and the oral submissions made. It is not disputed that the Applicant's bill of costs was taxed, that a reference was filed and the same was dismissed. What is in contention is whether the Applicant served the Respondent with the certificate of taxation to demand payment. The Applicant submitted that they served the certificate of taxation but the Respondent vehemently denied having been served with the same.

In this application, the applicant seeks judgment against the Respondent for the sum of Kshs. 541,549/= together with interest of 14 % pa from 24<sup>th</sup> March, 2016 until payment in full. It was submitted by the Respondent that there was an agreement for fees of Kshs. 160,000 which was disputed by the Applicant. This issue was dealt with by Justice Thurania in her ruling on the reference filed by the Respondent. In dismissing the reference, the learned judge noted that no such agreement for the fees was exhibited. That section 45 of the Advocates Act provides that such agreement must be signed by the Client or a duly authorized agent. The Judge found out that there being no written agreement between the parties there was no valid agreement.

On whether this Application can be challenged on the ground that no certificate of costs was served upon the Respondent, 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.”***

My understanding of section 51 is that unless a certificate of taxation has been set aside, the same shall be final and the court has the discretion to make any orders in relation to the certificate of costs. The certificate of costs in annexed to the Supporting Affidavit of the Applicant and the Respondent cannot deny of its existence.

When confronted with a similar situation, the court in the case of **Kithi & Company Advocates v Menengai Downs Limited [2015] eKLR** held that, *“As to the ground that no Certificate of Costs/taxation has been served upon the client, that cannot be a serious ground to challenge an application under Section 51 of the Advocates Act. If the Respondent had not been served with the Certificate of Taxation, it must have received the same when the present application was served upon it. This is because, produced and annexed as “GK1” to the Affidavit in support is a copy of the Certificate of Taxation dated 19<sup>th</sup> June, 2014.”*

On interest, Rule 7 of the Advocates Remuneration Order provides for interest on taxed Advocate/Client bills of cost and states that *An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.* For an Advocate to be able to charge interest, the bill must have been served upon the client. In the instant case, the Advocate has claimed interest from the date when the ruling on the taxation of the Bill was made. Service of the ruling dated 24<sup>th</sup> March, 2016 has not been disputed by the Respondent. I find that the ruling contains an itemised bill which suffices for the purpose of Rule 7.

The upshot of the above is that the Applicant's application succeeds and judgment is hereby entered for the Applicant against the Respondent for the sum of Ksh. 561,549/= together with interest at 14% per annum from 24<sup>th</sup>, March, 2016 until payment in full.

**Dated, Signed and Delivered at Nairobi this 12<sup>th</sup> Day of April, 2018.**

.....

**L. NJUGUNA**

**JUDGE**

***In the Presence of***

..... *For the Appellant/Applicant*

..... *For the Respondent*