



Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter & 2 others (Miscellaneous Civil Application E006 of 2022) [2022] KEELC 2842 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEELC 2842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
MISCELLANEOUS CIVIL APPLICATION E006 OF 2022**

LN GACHERU, J

JUNE 23, 2022

BETWEEN

DEL MONTE KENYA LIMITED APPLICANT

AND

**KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI)
MURANG'A CHAPTER 1ST RESPONDENT**

PETER KIGUTA KAMAU 2ND RESPONDENT

JOAN NJERI WANJIKU 3RD RESPONDENT

RULING

1. By a notice of motion application dated March 29, 2022, the applicant moved this court for orders:
 1. That this honorable court be pleased to adopt the certificate of costs issued in Murang'a ELC No 86 of 2018 in relation to the party and party bill of costs dated June 29, 2020, in the sum of Kshs 20,457,050.00 (Kenya shillings twenty million four hundred and fifty seven thousand and fifty only), as the judgment and decree of this honorable court
 2. That the applicant be awarded interest on the taxed costs at court rates from February 28, 2022, until full payment
 3. That the costs of this application be borne by the 1st- 3rd respondents.
2. The application is anchored on the grounds stated on the face of it and the supporting affidavit of Grishon Ng'ang'a Thuo Advocate, sworn on the March 29, 2022.
3. It is the applicant's case that it was the successful party in Murang'a ELC No 86 of 2018:- [*Kenya National Chamber of Commerce and Industry \(KNCCI\) Murang'a Chapter vs Del Monte Kenya*](#)



Limited & others, and was awarded costs. That through its advocate Njoroge Regeru Co Advocates a party and party bill of costs dated June 29, 2020, was prepared. The same was taxed at Kshs 20,457,050.00 and a certificate of costs issued on the March 28, 2022. It is the applicant's disposition that the decision of the taxing master has not been varied or set aside and no reference has been filed against it, and therefore this court should be pleased to adopt the said certificate of costs as an order of this court, and proceed to award costs to the applicant as provided by rule 7 of the Advocates Remuneration Order.

4. The application is unopposed despite service. The court directed that the application be canvassed by way of written submissions.
5. The applicant filed its written submissions on the May 31, 2022, and submitted that they are entitled to the orders sought and it is in the interest of justice that they are granted the same. The applicant invited this court to the provisions of section 51 of the Advocates Act on adopting certificate of costs as a judgment of court. It also relied on the case of Murang'a ELC No Misce' No 6 of 2021:- Del Monte Kenya Limited vs Misback Kibe Muiruri & 3 others, where the court adopted a certificate of costs that had not been set aside or varied.
6. The applicant herein was the 1st defendant in Murang'a ELC No 86 of 2018, and according to the certificate of costs dated March 28, 2022, the same was prepared in favour of the 1st defendant. The bill of costs dated June 29, 2020 was taxed and assessed on February 28, 2022 at Kshs 20,457,050/=. There is no evidence that the same has been set aside, appealed against or varied. The issues for determination are;
 - i. Whether the certificate of costs dated March 28, 2022, should be adopted as the judgment and decree of this court
 - ii. Whether the applicant is entitled to the interest as prayed
 - iii. Who should bear costs for the application

i. Whether the Certificate of Costs Dated March 28, 2022 Should be Adopted as the Judgment and Decree of this Court

7. Section 51(2) of the Advocates Act provides:

"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".

8. The section is instructive of the fact that the amount contained in certificate of costs is final and the court has the power thereof to enter judgment for the amount. This costs may only be altered by court since at the signing of the certificate of costs the taxing master becomes *functus officio*. The powers of the Registrar are espoused in order 49 of the Civil Procedure Rules and such powers do not involve entering judgment on the certificate of costs. As stated above, there is no evidence that the said certificate of costs has been set aside or altered and therefore that means the same is final.



9. This court associates itself fully with the observation of the court in Nairobi Misc No 52 of 2012 *Lubullellab & Associates Advocates v N K Brothers Limited* [2014] eKLR where it was held;

"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".

10. Guided by the above provisions, this court proceeds to adopt the certificate of costs dated March 28, 2022, as the judgment and decree of this court.

ii Whether the Applicant is Entitled to the Interest as Prayed.

11. The applicant deponed that it is entitled to interest compounded at 14% per annum from February 28, 2022, as provided for under rule 7 of the *Advocates Remuneration Order*. Rule 7 provides; -

"An advocate may charge interests at 14% per annum on his disbursement and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full."

12. A clear reading of the foregoing provisions gives power to an advocate to charge interest at 14% which is only chargeable after one month of delivery of bill to client, implying there must be evidence of service of bill to the client. There have been a number of cases on when time begins to run. In *Muri Mwaniki & Wamiti Advocates v John Ngigi Nganga & another* [2014] eKLR the court observed;

"There are two inextricable conditions here; that the bill should have been delivered and not paid within one month thereof. That means that if the amount of the bill is paid before expiry of one month from its delivery, no interest shall be payable under the bill. To my mind, rule 7 of the Advocates Remuneration Order does not refer to the certificate of costs, but the bill of costs. However, each case should be decided on its merits and circumstances. In the present case, delivery was done on April 8, 2013. The amount of costs was not paid within a month from delivery of bill. Therefore, and I hereby order that interest will be charged on the sum of Kshs 127,320/= from expiration of one month from delivery of his bill to the client, ie from May 8, 2013 until the time the costs were paid. The amount of the bill may be different from the taxed costs. But for all purposes of rule 7 of the Advocates Remuneration Order, interest should be on the amount in the certificate of costs as those are the costs which are payable".

13. This court has not had the chance to peruse the bill of costs referenced to by the applicant for purposes of computing time. As rightly stated by the court above, time will be computed from the period when the bill of costs was served on the respondent, while the amount useable will be a contained in the certificate of costs. The contents of the affidavit are uncontroverted and the applicant being the party desiring the orders of this court ought to have demonstrated compliance with rule 7. This is to the extent that they served on the respondent the bill of costs. The applicant has referred this court to the Murang'a ELC No Misc' No 6 of 2021, where the court allowed the prayer for interest. Distinctively in that case, the notice of motion was opposed and presently this notice of motion is not opposed.

14. Thus, this court finds and holds that the applicant has not adequately led the court into determining the date of service for purposes of computing time for interest. Therefore, it follows that prayer No 2 of the said application must fail.



iii. Who Should Bear Cost for the Application

15. It is trite that costs shall follow the events, and that the successful party should be awarded costs. It is not in doubt that the applicant is the successful party and this court has no reasons not to exercise its discretion in its favour. To this end, this court allows the notice of motion application dated March 29, 2022, and filed on March 31, 2022 in terms of prayers No 1 & 3. However, prayer No 2 fails.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23RD DAY OF JUNE, 2022.

L. GACHERU

JUDGE

In the presence of; -

Joel Njojo - Court Assistant

Mr Thuo for the Applicant

1st Respondent – Absent

2nd Respondent – Absent

3rd Respondent – Absent

L. GACHERU

JUDGE

23/6/2022

