



Ngomeni Swimmers Limited v The Commissioner of Lands & 6 others; St Patrick'S Hill School Limited & 13 others (Interested Parties) (Environment & Land Case 18 of 2013) [2022] KEELC 3714 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 18 OF 2013**

**JO OLOLA, J
JULY 28, 2022**

BETWEEN

NGOMENI SWIMMERS LIMITED APPLICANT

AND

THE COMMISSIONER OF LANDS 1ST RESPONDENT

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT ... 2ND
RESPONDENT**

THE DIRECTOR OF SURVEY 3RD RESPONDENT

THE DISTRICT LAND REGISTRAR (KILIFI) 4TH RESPONDENT

THE REGISTRAR OF TITLES (MOMBASA) 5TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 6TH RESPONDENT

THE ESTATE OF KATANA KENGA MWANYIRO 7TH RESPONDENT

AND

ST PATRICK'S HILL SCHOOL LIMITED INTERESTED PARTY

NDURYA MSANZU NDURYA INTERESTED PARTY

MORRIS SULUBU HARE INTERESTED PARTY

KADII TEZI Tsuma INTERESTED PARTY

SAMSON NGOWA INTERESTED PARTY

SWALEH AHMED SAID INTERESTED PARTY

NICHLAS KABANDO MWANGI INTERESTED PARTY

FENYASAN CONSTRUCTION LIMITED INTERESTED PARTY



KARISA FUNDI BULUSHI INTERESTED PARTY
KAHINDI KAINGU GONDA INTERESTED PARTY
THABU THUVA KHONDE INTERESTED PARTY
THE ESTATE OF SAFARI KIMERI THUVA INTERESTED PARTY
THE ESTATE OF CHARO MWABAYU NDURYA INTERESTED PARTY
THE ESTATE OF KATANA KENGA MWANYIRO INTERESTED PARTY

RULING

1. By the notice of motion dated August 3, 2020, Thabu Thuva Konde (interested party) prays for orders that:
 1. This honourable court be pleased to order that the amount certified on the certificate of taxation herein dated November 6, 2017 be entered as judgment of this court against the plaintiff/respondent;
 2. This honourable court order that the taxed costs do attract interest at the rate of 14% per annum from the date of issue of the certificate of taxation being on November 6, 2017 till payment in full;
 3. A decree be issued in respect of the certificate of taxation dated November 6, 2017 and that the applicant be at liberty to execute for recovery of the same in such manner as a decree of this honourable court; and
 4. Costs of this application be provided for.
2. The application is supported by an affidavit sworn by the interested party and is based on the grounds that:
 - (a) Pursuant to a bill of costs filed herein on June 9, 2014, the Honourable Deputy Registrar, upon hearing both parties delivered her ruling on July 21, 2017 and later issued a certificate of costs dated November 6, 2017 for Kshs 2,526,402/-;
 - (b) No reference has ever been filed before this honourable court challenging the taxation, and neither has the certificate of taxation been altered or set aside by this honourable court;
 - (c) In spite of several entreaties, the respondent has shown no commitment to pay the costs; and
 - (d) It is in the interest of justice, fairness and equity that the above prayers are granted.
3. I have carefully perused and considered the interested party's application together with the rival submissions filed herein by the learned advocates representing the parties. While the plaintiff did file submissions in opposition to the application, no other response either by way of grounds or a replying affidavit were filed.
4. In the application before me, the applicant desires that the amount certified on the certificate of taxation herein dated November 6, 2017 be entered as a judgment of this court and that the court do order that those costs do attract interest at the rate of 14% per annum. In addition, the applicant urged the court to issue a decree in respect of the certificate of taxation and that the applicant be at liberty to execute for the recovery of the same in such a manner as a decree of this court.



5. The application before me is brought pursuant to section 51(2) of the Advocates Act. Section 51 of the Advocates Act provides as follows:
 - (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate;
 - (2) 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.
6. In the matter herein, it is not disputed that pursuant to a bill of costs filed herein on June 9, 2014, the Honourable Deputy Registrar of this court did deliver a ruling thereon on July 21, 2017 taxing the bill at Kshs 2,526,402/-. Subsequently on November 6, 2017 a certificate of costs was issued for the taxed costs by the Deputy Registrar.
7. It is also not in dispute that no reference was ever filed challenging the taxation and the figures therefore remain as they were taxed. According to the applicant, the plaintiff has failed, ignored and/or refused to pay the costs despite several entreaties made and the sum taxed therefore remains outstanding.
8. The plaintiff despite service did not respond to the application. Instead, the plaintiff opted to file submissions herein in which it states without substantiation that the application herein is *sub judice* and *res judicata*. It was not clear why the plaintiff did not elaborate on the issues being delved into in their submissions by way of pleadings. As it were I did not think that evidence of the existence of any facts could be raised in the manner done through submissions which in any event were filed long after the applicant had filed his pleadings and submissions.
9. In the absence of any evidence that the plaintiff has satisfied the certificate of taxation or shown any willingness to do so, it is only fair and just that the orders sought by the Applicant be granted to enable him execute for the costs. I am also persuaded that given the time it has taken before the costs are satisfied, it is only proper that the same be allowed to attract interest which I hereby award at the rate of 14% per annum from the date of taxation until payment in full.
10. The interested party's application is accordingly allowed in terms of prayers 1, 2 and 3 thereof.
11. I make no further order as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYERI VIA MICROSOFT TEAMS THIS 28TH DAY OF JULY, 2022.

In the presence of:

No appearance for the applicants.

No appearance for the respondents.

Court assistant - Kendi.

JO OLOLA

JUDGE

