



Masore Nyang’au & Co Advocates v Supplies And Services Limited (Environment and Land Miscellaneous Application 122 of 2016) [2022] KEELC 3993 (KLR) (21 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3993 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 122 OF 2016
LN MBUGUA, J
JULY 21, 2022

BETWEEN

MASORE NYANG’AU & CO ADVOCATES APPLICANT

AND

SUPPLIES AND SERVICES LIMITED RESPONDENT

RULING

1. Coming up for determination is an application dated April 8, 2021 filed by the applicant/advocate which seeks the following orders:
 - i. That the Honourable court be pleased to enter judgement in favour of the applicant against the respondent in the sum of Kshs 2,912,907.16 as per the Certificate of Taxation issued in this case together with interest thereon at 14% from February 8, 2017 until payment in full.
 - ii. That the Honourable court be pleased to order the respondent to pay costs of this application.
2. This application supported by the sworn affidavit of Masore Nyang’au (The Applicant) dated April 8, 2021 is premised on the grounds that as the Advocate who represented the respondent in ELC No 1085 of 2013 between Intex Construction Ltd v Supplies & Services Ltd & others the bill of costs in that case was taxed in the sum of Kshs 2,912,907.16 which the respondent had not paid hence the institution of this application. The Applicant avers that the Respondent had filed a reference seeking to set aside the said taxation as well as a stay of further proceedings which applications were dismissed. As such judgement should be entered in his favour. He also pointed out that there was no contention over retainer.



3. The respondent in their grounds of opposition dated May 26, 2022 contested this application stating that it was premature and an abuse of the court process claiming that there was a pending case at the High Court cited as Miscellaneous Application No E249 of 2021 (O.S) between Kensalt Limited & another vs Leo Masore Nyang'au T/A Masore Nyang'au & Co Advocates whereby the taxed sum herein was the subject of that reference and that the applicant had received Kshs. 5,500,000 from the client. It is further contended that in the aforementioned High Court matter, the court had ordered that the matter be settled vide mediation and such mediation proceedings have not been concluded.
4. The applicant has filed two separate submissions, the first one dated 12th May 2022, while the latter (filed in response to the grounds of opposition filed late) are dated June 10, 2022. It was submitted that the certificate of taxation dated April 5, 2019 emanated from the taxed bill of costs in the case of Intex Construction Ltd vs Supplies & Services Ltd & others ELC 1085 of 2013 which had neither been altered nor set aside as per Rule 11 of the [Advocates Remuneration Order](#) and as such, an order for judgement should be entered as provided in section 51 (2) of the [Advocates Act](#) (Rev 2012).
5. It was further submitted that the retainer in the said case was not disputed, pointing out that if a client did not bring up the issue of any deposits paid to the advocate prior to the taxation, then this cannot be raised after taxation. Such an issue of deposit ought to be raised with the taxing officer during taxation so that it is deducted from the total amount due to the Advocate and if this is done after taxation then it becomes a cross suit as per Order 7 Rule 3 [Civil procedure Rules](#).
6. In response to the Grounds of Opposition, it was submitted that the respondent did not avail to this court pleadings of the case referred to; Miscellaneous Application No. E249 of 2021 (O.S) between Kensalt Limited & another v Leo Masore Nyang'au T/A Masore Nyang'au & Co. Advocates, that the said case was in respect of other matters yet to be taxed, and in any event, such a case having been filed in year 2021 was *res-judicata* and that the said case must have been filed to hamper applicant's recovery of the taxed sums. It was also pointed out that the High Court had asked the parties to settle the dispute through mediation but the mediation process was scuttled and the set time expired before a resolution was reached.
7. In conclusion, it was submitted that the respondent was trying to delay the case from being finalised. Reference was made to the cases of; [Invesco Assurance Co Ltd v V W Maina T/A V W Maina & Co Advocates](#) Mombasa and [Masore Nyang'au & Co Advocates v Kensalt Ltd & Supplies & Services Ltd](#).
8. No submissions were filed on behalf of the respondent.
9. The issue for determination is whether this court should enter Judgment in favour of the Applicant for the sum of Kshs. 2,912,907.16 as per the Certificate of Taxation dated April 5, 2019 with interest.
10. I have perused the record. I find that the clients bill of costs was taxed vide a ruling dated February 8, 2017(amended on October 19, 2017), thus a period of close to 5 years has lapsed since then. There is a Certificate of Taxation dated April 5, 2019. There is no appeal review or a stay of the said taxation ruling that is active. There was no contest on the issue of retainer during the taxation process or even during the reference proceedings. Equally there was no mention of any deposit paid during previous proceedings. There is no stay which has been sought in the case mentioned by the respondent; Kensalt Limited & Another v Leo Masore Nyang'au T/A Masore Nyang'au & Co. Advocates and the particulars of the said case are scanty.
11. A hiatus of 5 years is quite a long wait. Thus, I find no reason to decline the orders sought. In the circumstances, and in terms of section 51 (2) of the [Advocates Act](#), the application dated April 8, 2021 is allowed with costs.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21st DAY OF JULY 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Masore for the Applicant

Ingutia for Respondent

Court Assistant: Joan

