



Osoro Omwoyo & Co. Advocates v Mbaru & 111 others (Miscellaneous Application 3 of 2019) [2022] KEELC 12685 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12685 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
MISCELLANEOUS APPLICATION 3 OF 2019
CG MBOGO, J
SEPTEMBER 22, 2022**

BETWEEN

OSORO OMWOYO & CO. ADVOCATES APPLICANT

AND

HENRY MWANGI MBARU & 111 OTHERS RESPONDENT

RULING

1. Before this court for determination is a notice of motion application dated January 17, 2022 expressed to be brought under order 51 rule 1, order 21 rule 9 (1) (c) of the Civil Procedure Rules, paragraph 11(2) of the *Advocates Remuneration Order*, sections 3 and 3A of the *Civil Procedure Act* seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to enter judgment against the respondents for a sum of Kshs 87,878/-.
 3. That this honourable court be pleased to order interest at 12% pa on the taxed sum of Kshs 87,878/- with effect from May 6, 2020 until full payment.
 4. That the costs of this application be borne by the respondents in any event.
2. The application is premised on the grounds on the face of it and in the supporting affidavit of the applicant sworn on even date by Osoro Kennedy Omwoyo. The applicant deposed that at all material times relevant to the suit, the respondents were his clients and which costs in the matter was assessed at Kshs 87,878/- and he cannot commence execution proceedings against the respondents unless he obtains judgment on the same. The applicant further deposed that it is a legal requirement that such an application be made and judgment entered before execution can issue. The applicant relied on the ruling delivered on May 6, 2020.



3. I have carefully analysed the application and the annexure being the ruling delivered by the Deputy Registrar on May 6, 2020. The sole issue for determination is whether the instant application is merited. I have perused the court file and I note that the respondents have been served on numerous occasions with hearing notices *vide* affidavit of service filed in court to attend court for hearing of the instant application but the respondents have refused to do so.
4. Section 51 of the *Advocates Act* provides:
 - “(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.”
5. I have also perused the record and noted that although taxation was done on May 6, 2020 and the certificate of costs issued on January 13, 2022, there has not been a challenge to the taxing officer’s decision and the certificate of costs.
6. From the record, it is more than two years since the issue of the advocate’s costs was determined. That certificate having been issued and not challenged, it became conclusive as to the amount ascertained by the taxing officer. I take into account the principle in Article 159 (2) (b) and (d) of the *Constitution* that justice should not be delayed and that justice should be administered without undue regard to procedural technicalities. I am also alive to the principles in Sections 1A and 1B of the *Civil Procedure Act*, that the court’s overriding objective should be to facilitate just, expeditious, proportionate and affordable resolution of disputes.
7. As I have already explained herein above, the advocate /client bill of costs was taxed on May 6, 2020 and a certificate of costs issued on January 13, 2022. That certificate was not challenged and has not been set aside or altered. The respondents were served with the present application but did not respond to it. They also failed to attend court during the hearing despite being served which leaves the application unopposed.
8. That being the case, and there being no challenge to the certificate of costs, this court has no option but to allow the application. Consequently, the application dated January 17, 2022 is allowed as follows;
 - i. This court enters judgment against the respondents for a sum of Kshs 87,878/=.
 - ii. Interest is awarded at 12% per annum on the taxed amount of Kshs 87,878/= with effect from 6th May, 2020 until payment in full.
 - iii. Costs of this application to be borne by the respondents. It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAROK ON THIS 22ND DAY OF SEPTEMBER, 2022.

HON. C.G. MBOGO

JUDGE

In the presence of: -



CA:Chuma

Ms Munyua holding brief for Mr Osoro for the applicant

And in the absence of the respondent who was served but never entered appearance or filed his response.

