



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthaura Mugambi Ayugi & Njonjo Advocates v TC Engineering  
& Contracting Limited (Miscellaneous Application E055 of 2021)  
[2022] KEELC 13289 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 13289 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E055 OF 2021**

**JA MOGENI, J  
SEPTEMBER 21, 2022**

**BETWEEN**

**MUTHAURA MUGAMBI AYUGI & NJONJO ADVOCATES ..... APPLICANT**

**AND**

**TC ENGINEERING & CONTRACTING LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Costs in favour of the applicant were taxed and certified by the deputy registrar and a certificate of taxation issued in the sum of Kshs 1,799,030.40. The costs were taxed on March 31, 2022.
2. The applicant filed a notice of motion application dated April 1, 2022 filed under section 51(2) of the *Advocates Act*, order 51 rule 1 of the *Civil Procedure Rules* and section 1A, 1B, 3A of the *Civil Procedure Act*, paragraph 7 of the *Advocates Remuneration Order* and any other enabling provisions of the law. The application is the subject of this ruling and is seeking for the following orders: -
  1. That this honourable court be pleased to enter judgment for the advocate/applicant as against the client/respondent for the taxed and certified amount of Kshs 1,799,030.40 as per the certificate of taxation herein dated March 31, 2022.
  2. That the said sum of Kshs 1,799,030.40 be paid with interest at the rate of 14% per annum from April 1, 2021, which is the date of filing the bill of costs herein, until payment in full.
  3. That pursuant to the entry of judgment, hereinabove, a decree be issued.
  4. That the costs of this application be borne by the client/ respondent.
3. The application was supported on the grounds stated in paragraphs (a) to (d) on the face of the application and the annexed affidavit sworn on April 1, 2022 by Jomo Nyaribo; counsel from the firm representing the applicant/ advocate. I do not need to reproduce them here.



4. The application is opposed. There is a replying affidavit sworn by Trevor Okoth, a chief finance officer of the respondent on June 22, 2022.
5. On May 18, 2022, the court directed that the application be canvassed by way of written submissions. parties submitted and a ruling date was reserved.
6. The court has now carefully read and considered the application dated April 1, 2022, the rival affidavit and the pleadings in general and finds that the issues for determination is whether the applicant's application is merited.
7. It is the applicant's case that they filed a bill of costs on April 1, 2021 seeking a sum of Kshs 3,566,557.00 in a bid to recover its legal fees for services rendered to the clients/respondents. They contended that on the January 19, 2022 the said bill of costs was taxed at an all-inclusive sum of Kshs 1,799,030.00 in favour of the advocate/applicant and that the respondent has never challenged, set aside or reviewed the certificate of taxation issued herein. The applicant prays that the certificate of costs be converted to a judgment with an order for payment of interest on the same.
8. It is the respondent's case that they instructed their advocates to come on record on March 28, 2022 and that was when they found out that the court had already taxed the bill of costs without the respondent's knowledge and participation as the same was never served upon the respondent. They contended that the advocate/applicant had already taxed the contents of the present bill in HC Misc E214, E217, E218, E226 and E240 of 2021. They reiterate that they were not aware of any bill of cost filed and if any bill was filed, they oppose the bill as a whole and the certificate of costs dated March 31, 2021 as taxed on or about April 1, 2021 as they were not served with any taxation notice or the bill of costs.
9. 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.'
10. Having regard to the above provision it is clear that the only instances where a court may not enter judgment on a certificate of costs is where the certificate has been set aside, varied and/or altered or the retainer is disputed. See *Republic -vs- City Council of Nairobi Ivyland Park Ltd (interested party) Exparte Inderpal Singh & 2 others (2021) eKLR* where P. Nyamweya J (as she then was) stated: -'
 

' It is an established position of law that the only reason a court of law cannot enter judgment on a certificate of costs is if the same has been set aside or altered, or where there is an issue of retainer.'
11. From a perusal of the court records, it is apparent that the respondent opposes the bill as a whole and the certificate of costs. It is also their case that the court had already taxed the bill of costs without the respondent's knowledge and participation as the same was never served upon the respondent.
12. It is the applicant's case the respondent has never challenged, set aside or reviewed the certificate of taxation issued herein. I agree. There is no evidence adduced in this court demonstrating that the respondent filed a reference within the period of 14 days as per paragraph 11 of the Advocates Remuneration Order. The respondent also averred that they were not served with notice of taxation. however, from the record, the deputy registrar delivered a ruling dated November 3, 2021 affirming that the applicant served the notice of taxation and the bundle of documents in support of the bill of



costs upon the respondent. A further ruling delivered on January 19, 2022 affirmed that the applicant's advocate-client bill of costs was served on the respondent.

13. The Advocates Remuneration Order provides for the procedure to be followed when a party opposes the taxation of the bill of costs. The procedure for the challenge of the results therefrom is provided under paragraph 11 of the said order.
14. It is apparent from the said provisions of the law that the timelines for filing a reference is a period of 14 days. In this instant application the court has not been notified of a pending reference and/or any objection to the taxation under rule of the Advocates Remuneration Order and in those circumstances, I see no bar to entry of judgment in terms of the certificate of taxation.
15. Rule 7 of the Advocates Remuneration Order provides for a claim for interest. It states that;  

' An advocate may charge interest at 14% per annum on his disbursements and cost, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest it raised before the amount of the bill has been paid or tendered in full'.
16. As regards the interest rates, I find that the provisions of rule 7 of the Advocates Remuneration Rules provide for interest rates at 14% per annum, payable from the 30<sup>th</sup> day from the date on which the bill of costs was delivered. The bill of costs herein was received by the respondent on May 26, 2021, therefore interest is payable from the June 25, 2021.
17. In the final result, I therefore find that the application herein has merit and I allow it as prayed save for a slight amendment on prayer 2 in respect of the date. I adopt the certificate of taxation issued by the taxing officer on March 31, 2022 as a judgment of the court. I hereby grant prayer 1 and 3 of the application. I order that the taxed costs of Kshs 1,799,030.40/= should attract interest at 14% per annum from June 25, 2021 until payment in full.
18. Accordingly, I therefore enter judgment in favour of the applicant for Kshs 1,799, 030.40/=, together with interest thereon at 14% per annum until payment in full, calculable from June 25, 2021.
19. The costs of the application dated April 1, 2022 are awarded to the advocate/applicant.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022.**

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**MOGENI J**

**JUDGE**

In the Virtual presence of:-

Mr Imbugwa for the Advocate/Applicant

None appearance for the Respondent

Court Assistant: Vincent Owuor

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**MOGENI J**



**JUDGE**

