



Anthony Burugu & Co. Advocates v City Council of Nairobi (Environment and Land Miscellaneous Application E023 of 2021) [2022] KEELC 13578 (KLR) (19 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2021**

MD MWANGI, J

OCTOBER 19, 2022

N THE MATTER OF THE ADVOCATES REMUNERATION ORDER AND IN THE MATTER

BETWEEN

ANTHONY BURUGU & CO. ADVOCATES ADVOCATE

AND

CITY COUNCIL OF NAIROBI CLIENT

RULING

(In respect of the notice of motion dated July 7, 2022 for entry of judgment after taxation of the advocate-client bill of costs and issuance of a certificate of taxation)

Background

1. The application by the advocate/applicant is brought under the provisions of section 51(2) of the *Advocates Act*, cap 16 of the Laws of Kenya and all enabling provisions of the law. The advocate prays for entry of judgment against the client/respondent in terms of the certificate of taxation dated June 20, 2022. The advocate also seeks for costs of the application.
2. The application is premised on the grounds on the face of it, more particularly, that: -
 - a. The applicant filed the advocate- client bill of costs dated February 10, 2021.
 - b. The bill was taxed on March 17, 2022 and a certificate of taxation dated June 20, 2022 for Kshs 546,560.88/- issued by the deputy registrar.
 - c. The applicant now seeks to enforce the certificate of taxation.
 - d. It would be in the interest of justice if the orders sought were granted.
3. The application is further supported by the affidavit of Anthony Burugu sworn on July 7, 2022.



Client's Response

4. The application is opposed by the client/respondent by way of grounds of opposition dated the August 26, 2022. The respondent contends that there was no retainer agreement between the applicant and the respondent and none was produced in court before the taxing master. Further that no advocate-client relationship existed between the applicant and the respondent to warrant the taxation and granting of the orders sought in the instant application.
5. The client admits that the applicant prepared a bill of costs dated the February 10, 2021 and duly served upon it but alleges that the said bill of costs was incompetent as it violated the provisions of the [Advocates Remuneration Order, 2017](#) schedule 6B which provides for the relevant scale, and amounts to be charged when drawing an advocate-client bill of costs.
6. The clients further asserts that the bill of costs was drawn in bad faith and with the intention of extorting it since all the items listed therein were grossly overstated. Therefore, the taxing master in proceeding to consider the advocate-client bill of costs erred in fact and in law by concluding that the advocate was entitled to taxed costs of Kshs 546,560.88/-.
7. The client therefore claims that the decision of the taxing master amounts to wrongful exercise of discretion as it was based on an error of principle. Consequently, the application should be dismissed as it is misguided, bad in law and meant to delay the cause of justice.

Court's Directions

8. The court's directions were that the application by the advocate be heard orally on the October 19, 2022. The client was to be served with a hearing notice which was done. Despite service of the hearing notice upon the client's advocates, there was no appearance on its behalf. The court being satisfied that the client/respondent was duly served as per the affidavit of service on record, the court proceeded to hear the application.

Issues for Determination

9. What is before this court is an application for entry of judgment after a taxation of an advocate - client bill of costs and issuance of a certificate of taxation; not a reference. Accordingly, the only issue for determination is whether the court should enter judgment in favour of the advocate/applicant as prayed.

Determination

10. It is not in dispute that the advocate-client bill of costs dated February 10, 2021, the subject matter of this application was taxed at Kshs 546,560.88/-. A certificate of taxation was subsequently issued on June 20, 2022.
11. The taxation of the advocate's bill of costs has not been challenged by the client in accordance with the provisions of rule 11 of the [Advocates Remuneration Order](#) which provides that:

“Where a party is aggrieved by the decision of a taxing master, he is required to object in writing by requesting the taxing master to give reasons for the items of taxation that he is objecting to and thereafter file reference before a judge.”



12. Section 51 (2) of the *Advocates Act* on the other hand 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.”

13. In the case of *Lubulellah & Associates Advocates v N K. Brothers Limited* [2015] eKLR the court observed that;

“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. An applicant is not required to file suit for the recovery of costs”.

14. The client/respondent has not filed a reference to challenge the ruling of the taxing master. The issues that the client/respondent raises in the grounds of opposition were the very issues raised before the taxing master during taxation through its written submissions dated August 10, 2021 while opposing the bill of costs. If the client was dissatisfied with the ruling of the taxing officer, the law has provided the avenue to address the grievance by initiating a reference by way of a chamber summons application as provided for in paragraph 11(2) of the *Advocates Remuneration Order*. The client has not taken advantage of that appropriate avenue.

15. Accordingly, the court finds that the certificate of taxation issued in this matter has not been challenged as provided for under the *Advocates Remuneration Order*. That being the case, the court has no option but to enter judgment in favour of Anthony Burugu & Co Advocates for the sum of Kshs 546,560.88/- as prayed.

16. The advocate/applicant shall also have the costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER 2022

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Burugu for the Advocate/Applicant.

No appearance for the Client/Respondent.

Court Assistant – Hilda.

M.D. MWANGI

JUDGE

