



Wamaitha Kange'the & Co. Advocates v Chemilil Sisal Estate & 2 others (Environment & Land Miscellaneous Case 17 of 2020) [2022] KEELC 13553 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13553 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 17 OF 2020
EK WABWOTO, J
OCTOBER 13, 2022**

BETWEEN

WAMAITHA KANGE'THE & CO. ADVOCATES APPLICANT

AND

CHEMILIL SISAL ESTATE 1ST RESPONDENT

KAPCHURE FARM 2ND RESPONDENT

**MANUBHAI NARANBHAI PATEL & BABUBHAI KISHANBAHAI PATEL C/A
PARESH BABUBHAI PATEL 3RD RESPONDENT**

RULING

1. This is a ruling in respect notice of motion dated February 18, 2022, by the applicant under the provisions of section 51 (1) and (2) of the *Advocates Act*. The application seeks orders that judgment be entered against the respondent for Kshs 509,660/- being the taxed and certified costs and interest from March 25, 2020 until payment in full.
2. The application is based on the grounds on the face of the same and the supporting affidavit of Wamaitha Kange'the advocate sworn on February 18, 2022. The grounds advanced in support of the application are that the advocate bill of costs was taxed on June 15, 2021 and that, the respondents advocate was informed of the determination of the suit and of intention of the applicant to have the costs taxed.
3. Pursuant to the directions of this court issued, the court directed the application be canvassed through written submissions. The parties were given timelines within which to file and exchange their respective submissions. No submissions were filed by either party. That notwithstanding the court was still obligated to consider the pleadings on record in rendering its ruling.



4. I have considered the application and the supporting affidavit. 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.”

5. In this matter, I find that the respondents was properly served with the application and as such having not disputed the certificate of taxation issued on February 1, 2021, this court will therefore enter judgment against the respondent for the said taxed costs of Kshs 509,660/= together with interest payable from March 25, 2020 until payment in full.

6. On the issue of costs, courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the case but also the circumstances of each case. The respondents did not resist the application and in the circumstances, I direct that each party to bear own costs of these proceedings.

7. Consequently, the application therefore stands allowed in terms of prayer 1 with an order that each party to bear its own costs of the application.

8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF OCTOBER 2022

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Wanjohi for the Applicant.

N/A for the Respondents.

Court Assistant; Caroline Nafuna.

E. K. WABWOTO

JUDGE

