



**Republic v Deputy County Commissioner Mukaa Sub-County, Makueni County;
Matheka & 7 others (Interested Parties) (Environment and Land Court Judicial Review
Application 14 of 2018) [2022] KEELC 15404 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15404 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION 14 OF 2018
CG MBOGO, J
DECEMBER 20, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

**DEPUTY COUNTY COMMISSIONER MUKAA SUB-COUNTY, MAKUENI
COUNTY RESPONDENT**

AND

MBEENI MATHEKA & 7 OTHERS INTERESTED PARTY

RULING

1. The 1st, 2nd and 4th interested parties filed the notice of motion dated May 10, 2021 under the provisions of section 51 of the [Advocates Act](#) as read with rule 7 of the [Advocates \(Remuneration\) Order](#).
2. The interested parties seek the following orders:
 - i) That judgment be entered in the sum of Kshs 151,953/= together with interest thereon from February 15, 2021 until payment in full.
 - ii) That costs do abide the application.
3. The application is supported by the affidavit of JM Tamata Advocate sworn on May 10, 2021. It is premised on the grounds on the face of it and on the averments that the party and party bill of costs herein was taxed at Kshs 151,953/= on February 15, 2021 and a certificate of costs subsequently issued. That the said taxed costs are yet to be paid and have not been challenged. That for execution to proceed, the certificate of costs needs to be entered as a judgment of this court.



4. The application was opposed by the *ex-parte* applicant vide the grounds of opposition dated June 21, 2021. It was contended inter alia that the application is misconceived and an abuse of court process. That costs cannot be declared a judgment as the same were awarded after judgment had been entered. That the 1st interested party is now deceased and there has been no substitution. That the *ex-parte* applicant has appealed to the Court of Appeal against the judgment of the superior court.
5. On June 21, 2021, Mr Tamata the counsel for the 1st, 2nd and 4th interested parties together with Mr Muia the counsel for the *ex-parte* applicant made their respective oral submissions on the application.
6. Mr Tamata argued that the application is properly grounded within the law. That the *ex-parte* applicant had not presented evidence to establish the death of the 1st interested party as contended. That the said death was again not raised during taxation. That the *ex-parte* applicant had also not presented evidence of the existence of an appeal. Lastly, it was submitted that there has been no stay of execution of the judgment even if there was an appeal.
7. Mr Muia argued that the application is not grounded within the correct legal procedure. That the 1st interested party is deceased and as such, he should have been substituted for proceedings to continue. That in the event the Court of Appeal were to nullify the judgment of this court, there would be nobody to execute against in respect of the taxed costs.
8. In a further rejoinder, Mr Tamata argued that section 31 (2) of the [Advocates Act](#) provides for the conversion of taxed costs into decrees or judgment. That the arguments on the existence of an appeal and the death of the 1st interested party remain evidence from the bar as no proof had been presented.
9. The gravamen of this application is whether the applicants' certificate of costs ought to be converted into a decree of this court.
10. Section 51 (2) of the [Advocates Act](#) provides for the mode under which the certificate of costs shall be converted into an executable decree of the court. The law provides as follows: -

(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.
11. Paragraph 7 of the [Advocates \(Remuneration\) Order, 1962](#) provides that the Advocate may charge interest on the taxed costs. The law provides as follows: -

"An Advocate may charge interest at 14 per cent per annum on his disbursements and costs, 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 is raised before the amount of the bill shall have been paid or tendered in full."
12. On the other hand, paragraph 11 of the [Advocates \(Remuneration\) Order, 1962](#) provides the mode by which an objection to the decision of the taxing officer shall be filed in court. Paragraph 11 (1) thereof provides as follows: -

"Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects."



13. In the present case, the *ex-parte* applicant wishes to object to the execution of the taxed costs. It is noteworthy that a proper reference has not been filed as per the provisions of paragraph 11 of the *Advocates (Remuneration) Order, 1962*.
14. The *ex-parte* applicant's grounds of opposition to the application are in the nature of an objection to the taxation proceedings. At this stage, this court cannot interfere with the decision of the taxing officer when the proper jurisdiction has not been invoked. Besides, none of the contentions in the grounds of opposition can be substantiated.
15. The upshot is that I find merit in the application dated May 10, 2021. It is hereby allowed in terms of prayer 1 thereof.

SIGNED, DATED AND DELIVERED AT NAROK VIA EMAIL THIS 20TH DAY OF DECEMBER, 2022.

MBOGO CG.

JUDGE

December 20, 2022

