



**Hassan, Bulle & Co Advocates v Leebarn Builders Limited (Environment & Land Miscellaneous Case 87 of 2014) [2024] KEELC 563 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 563 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE 87 OF 2014  
OA ANGOTE, J  
FEBRUARY 6, 2024**

**BETWEEN**

**HASSAN, BULLE & CO ADVOCATES ..... APPLICANT**

**AND**

**LEEBARN BUILDERS LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant/Advocate has filed a Notice of Motion application dated 30<sup>th</sup> May 2023, seeking for the following orders:
  - a. Judgement be and is hereby entered in favour of the Applicant for the sum of Kshs. 1,557,115.60/= pursuant to the Certificate of Taxation dated 24<sup>th</sup> May 2023.
  - b. Interest be and is hereby granted on prayer 1 above at the court rates from 7<sup>th</sup> March 2017 until payment is made in full.
  - c. Costs of the Application to the Applicant.
2. The grounds of the application are that the Respondent/Client instructed the Applicant/Advocate to represent it in a land transaction for the construction of the estate project in relation to LR. No. 209/13294/2; that the Applicant filed and served the Respondent with the Bill of Costs dated 27<sup>th</sup> March 2014 and that on 8<sup>th</sup> March 2016, the Learned Deputy Registrar (Hon. S. Mwayuli) delivered the ruling dated 7<sup>th</sup> March 2016 taxing the Bill of Costs at Kshs. 2,557,115.60/-.
3. The Applicant averred that the Certificate of Taxation of the said Kshs. 2,557,115.60/- issued on 24<sup>th</sup> May 2023 constitutes a bona fide debt. The Applicant however depones that despite the said Bill of Costs being taxed and served upon the Respondent, they have refused, neglected and/or failed to make full settlement of the said debt and that the Respondent has only made payment of Kshs. 1,000,000 which payment was made and acknowledged by the Applicant.



4. The Respondent/Client opposed the application vide a Replying Affidavit sworn by Mohamed Hersi Ali, a Director of the Respondent. Mr. Mohamed Hersi Ali deponed that the Applicant has not been candid with the court and that only the sum of Kshs. 1,557,115 is owing, yet the Applicant owed the Respondents' Director, Amina Ega Mohamed Kshs. 3,000,000, which the Applicant has been ordered to pay in ELC No. 1570 of 2014 and Kshs. 1,200,000 having been ordered by the Court to pay such sums as taxed costs in ELC 1570 of 2014.
5. Mr. Hersi Ali deponed that the Applicant has reneged to pay these sums on the basis of a Court of Appeal decision whose veracity his co-director has questioned; that the court is yet to decide on the authenticity of the Court of Appeal decision dated 27<sup>th</sup> July 2013 and that the Court should not decree that the Applicant collects any moneys from the Respondent when the Applicant has reneged to pay the Respondent's director Kshs. 3,000,000 damages plus the costs in ELC 1570 of 2014 of Kshs. 1,262,440/-.
6. Mr. Hersi Ali urged that the justice of this case dictates that the court dismisses the application as the sums owing to the Applicant inclusive of interest is KShs. 2,942,947, which is less than Kshs. 6,090,291, owing to the Respondent's director Amina Ega Mohamed from 7<sup>th</sup> May 2020.
7. He further deponed that the Applicant is also guilty of withholding the Respondent/ Directors four titles for L.R. 209/13329/111, LR 209/13329/111 209/13329/112 and LR 209/13329/113 and of disobedience of a Court Order issued on 7<sup>th</sup> May 2020 in ELC 1570 of 2017 and that the Applicant must not get reprieve from the Court while deliberately causing the Respondents' Directors losses totaling to millions of shillings for withholding the titles.

#### **Analysis and Determination**

8. The application before this court has been made under Section 51(2) of the *Advocates Act*. The same is with respect to the Ruling by Deputy Registrar Hon. S. Mwayuli on the Bill of Costs between the parties herein.
9. In her decision dated 7<sup>th</sup> March 2016, Hon. Mwayuli taxed the said Bill of Costs at Kshs. Kshs. 2,557,115.60. A Certificate of Taxation to the same effect was issued on 24<sup>th</sup> May 2023 by Hon. Diana Orago.
10. Section 51(2) of the *Advocates Act* prescribes 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. The Applicant's averment is that the Respondent has only paid Kshs. 1,000,000 out of the certified sum. They therefore seek judgement to be entered against the Respondent for the remaining sum of Kshs. 1,557,115.60 plus interest.
12. The Respondent has neither appealed against the Ruling of the Taxing Master nor denied that it indeed he owe the balance of Kshs. 1,557,115.60. The Respondent's contention is that the Applicant in fact owes the Respondent's Director, Ms. Amina Ega Mohamed Kshs. 3,000,000, which the Applicant has been ordered to pay in ELC No. 1570 of 2014 and Kshs. 1,200,000 having been ordered by the Court to pay such sums as taxed costs in ELC 1570 of 2014.



13. The procedure set out in Section 51(2) of the *Advocates Act* facilitates the expeditious disposal of cases relating to recovery of advocate-client costs. This was held by Mshila J in *Tom Ojienda & Associates vs Nairobi City County* [2022] eKLR as follows:

“The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:

- a. the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
- b. the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
- c. there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.”

14. In this matter, there is no dispute that the costs have indeed been taxed, and that the certificate of costs has not been set aside or stayed. This is therefore a suitable case for this court to exercise its discretion and enter Judgment against the Respondent for the certified sum.

15. As to the sums that the Respondent claims that the Applicant owes to its Director pursuant to a decision of the court in ELC 1570 of 2014, the Respondent ought to pursue the same in that case, and not in this particular matter.

16. Although the Applicant has sought for interest at the court rates from 7<sup>th</sup> March 2017 until payment is made in full, it is noteworthy that the Deputy Registrar’s Ruling dated 7<sup>th</sup> March 2016 does not contain any order as to interest. The invitation for this court to make an order as to interest is tantamount to asking this court to sit in appeal of the decision of the Deputy Registrar, when no such appeal has been filed.

17. This position was adopted in *Governors Baloon Safari Limited vs Skyship Company Limited & Another* [2020] eKLR. In this case, the court relied on the earlier case of Shadi Ram Mehindra Bc Mohindra 1957 Ex. 708 where it was held that “costs do not carry interest without a special order.”

18. However, this being a Judgment on costs, interest is payable from the date of this decision until payment in full.

19. For those reasons, the court allows the application dated 30<sup>th</sup> May 2023 as follows:

- a. Judgment be and is hereby entered in favour of the Applicant for the sum of Kshs. 1,557,115.60 pursuant to the Certificate of Taxation dated 24<sup>th</sup> May 2023.
- b. Interest is hereby granted on the above sum at the court rates from the date of this Ruling until payment is made in full.
- c. Parties shall bear their own costs for this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**O. A. ANGOTE**

**Judge**

In the presence of;



Mrs Wachira for Respondent holding brief for Koki

Mr. Adier for Applicant

Court Assistant – Tracy

