



Ndovu Builders & General Contractors Ltd v Attorney General & 6 others (Environment and Land Case Civil Suit 43 of 2015) [2024] KEELC 3457 (KLR) (9 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3457 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT 43 OF 2015**

A NYUKURI, J

APRIL 9, 2024

BETWEEN

NDOVU BUILDERS & GENERAL CONTRACTORS LTD PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

DIRECTOR OF SURVEYS 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

LAND REGISTRAR MACHAKOS 4TH DEFENDANT

DISTRICT SURVEYOR MACHAKOS 5TH DEFENDANT

PETER WAMBUA MAUYE 6TH DEFENDANT

JOSEPH MUSYOKI WAMBUA 7TH DEFENDANT

RULING

1. By a notice of motion dated 28th February 2024, the plaintiff sought that judgment be entered for the applicant and a decree do issue for the taxed amount of Kshs. 181,195/- with interest from the date of taxation. They also sought that costs of the application be borne by the 6th and 7th defendants. This application was brought pursuant to the provisions of Section 51 (2) of the *Advocates Act*.
2. The application was predicated on the affidavit of Philip M. Mulwa counsel for the applicant. The applicant's case is that this suit was heard and judgment entered for the plaintiff on 4th October 2019. That thereafter, the applicant filed a bill of costs dated 29th January 2021 which was taxed at Kshs. 181,195/- on 23rd March 2022. They maintained that there was need to allow the application to pave way for execution. The application is unopposed.



3. Having considered the application and the affidavit in support thereto, the only issue that arise for determination is whether judgment should be entered in terms of the certificate of costs herein.
4. Section 51 of the *Advocates Act* provides as follows;
 1. Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivery up of any deeds, documents and papers by an advocate shall be made in the matter of the advocate.
 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.
5. Therefore where an advocate-client bill of costs has been taxed and where the retainer is not contested, then the court can enter judgment in terms of the certificate of costs. It is my view that the provisions for entry of judgment where the retainer is not contested in Section 51 (2) of the *Advocates Act*, applies only in the matter of an advocate regarding advocate-client bill of costs. That is a matter filed in the name of the advocate. However in a suit, like in the instant matter, where the primary parties' dispute was not touching an advocate-client bill of costs and that dispute has already been heard and determined and judgment entered, then Section 51 (2) of the *Advocates Act* is inapplicable, because once there is a judgment on the main dispute, there can be no judgment on the party and party costs. Those party and party costs can be executed on the basis of the judgment and decree already made by the court.
6. It is my view that having two judgments; one on the suit and another one on the party and party costs would be an absurdity and is not the intention of the provisions of Section 51 (2) of the *Advocates Act*.
7. For those reasons, the application dated 28th February 2024 lacks merit and the same is hereby dismissed. There is no order as to costs.
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 9TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

A. NYUKURI

JUDGE

In the Presence of;

Mr. Mutinda for plaintiff/applicant

No appearance for defendant/respondent

Court assistant – Josephine

