



**Njeru, Nyaga & Co Advocates v Thome Residents Welfare Association (Environment & Land Case E056 of 2021) [2024] KEELC 5237 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5237 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E056 OF 2021**

**AA OMOLLO, J**

**JULY 4, 2024**

**BETWEEN**

**NJERU, NYAGA & CO ADVOCATES ..... ADVOCATE**

**AND**

**THOME RESIDENTS WELFARE ASSOCIATION ..... CLIENT**

**RULING**

1. The Applicant filed notice of Motion dated 11<sup>th</sup> November 2022 supported by an affidavit sworn by Martin Njeru Nyaga on the same date seeking for the following orders;
  1. That this Honourable Court be pleased to enter judgement against the Respondent for the sum of Kshs.448,760.50/= being certified costs due.
  2. That the taxed costs shall attract interest at the rate of 14% per annum from 1<sup>st</sup> December 2021, until payment in full.
  3. That the costs of this Application be provided for.
2. The motion is based on the grounds that on 8<sup>th</sup> March, 2021 the Applicant drew its bill of cost towards settlement of their fees after withdrawing from acting for the Respondent and the Respondent failing to settle the legal fees.
3. That the Applicant's Bill of Costs dated 8<sup>th</sup> March 2021 was taxed on 1<sup>st</sup> December 2021 by HON. I.N BARASA (DR) and Kshs.448,760.50/= awarded to the Applicant and a certificate of Taxation was issued on 28<sup>th</sup> February 2022 by the Taxing Officer which has neither been set aside nor varied by the Honourable Court.
4. In opposition, the Respondent filed an affidavit sworn by Laurel Mitchell on 12<sup>th</sup> April 2024 stating that the motion is not merited, as the Respondent filed a Notice of Appeal dated 20<sup>th</sup> February 2024 to the Court of Appeal against the Ruling by Justice E.K Wabwoto delivered on 18<sup>th</sup> January 2024,



thus the Applicant should await a determination of the Appeal prior to affirming the application for judgement.

5. No submissions have been filed.
6. It is evident that the ruling that was delivered on 1<sup>st</sup> December 2021 on the bill of cost filed was by the Deputy Registrar, Hon. I. N Barasa, sitting in her capacity as a Taxing Officer and not a judge of the High Court. That the ruling the Respondent is appealing against was delivered on 18<sup>th</sup> January 2024 is by J. Wabwoto.
7. Section 51(2) of the *Advocates Act* provides:

“The certificate of a taxing officer by whom it 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.”

8. An interpretation of the said provision infer that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his/her 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.
9. In the case of *Lesinko Njororge & Gathogo Advocates v Invesco Assurance Co. Ltd* [2021] eKLR it was stated thus:

“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:

- (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
- (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
- (3) 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. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.”

10. The Applicant has also sought interest at 14% from 1<sup>st</sup> December 2021, until payment in full. Rule 7 of the *Advocates Remuneration Order* states as hereunder-

“An advocate may charge interest at 14% 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 has been paid or tendered in full”.

11. The Bill of cost in subject was taxed on 1<sup>st</sup> December 2021 and certificate of costs issued. Thus interest of 14% claimed should commence after expiration of one month thereof, to wit, 1<sup>st</sup> January 2022.
12. In light of the fact that the certificate of taxation has not been set aside, there is no reason why the court should decline to grant the motion. In the result, I hold that the application is merited as it is brought in compliance with the law. I enter judgement in favour of the applicant for the sum of Kshs.448,760.50/



= being certified costs due with interest at the rate of 14% p.a. from 1<sup>st</sup> January 2022, until payment in full.

13. The applicant is also be awarded costs of the application.

**DATED, SIGNED & DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2024**

**A. OMOLLO**

**JUDGE**

