



Mugendi Karigi & Co. Advocates v Doric Industries Limited (Miscellaneous Application E057 of 2021) [2023] KEELC 17165 (KLR) (3 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17165 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E057 OF 2021
MD MWANGI, J
MAY 3, 2023
IN THE MATTER OF THE MILIMANI ELC CASE NO. 686 OF
2017 (FORMERLY MILIMANI CIVIL CASE NO. 507 OF 2013)**

BETWEEN

MUGENDI KARIGI & CO. ADVOCATES ADVOCATE

AND

DORIC INDUSTRIES LIMITED CLIENT

RULING

Background

1. In this matter, the Advocate's Bill of Costs was taxed on July 4, 2022 and the Certificate of Taxation dated July 18, 2022 issued. The Advocate thereafter on August 22, 2022 made an application for entry of judgment. The Client however, before the Advocate's application could be heard, made an application vide the Chamber Summons dated September 23, 2022 seeking amongst other things, extension of time within which to file a reference against the ruling of the taxing master. The Court directed the hearing of the Client's application ahead of that of the Advocate. This court after considering the Client's application made its determination striking it out with costs on the February 21, 2023.
2. The application now before me is the Advocate's Notice of Motion application dated August 22, 2022 seeking entry of judgement in favour of the Advocate for the sum of Kshs 5,735,020.76/= being the taxed costs. The Advocate too prays for the costs of the application.
3. The application is premised on the grounds on the face of it mainly that the Client/Respondent owes the Advocate/Applicant Kshs 5,735,020.76/= being the taxed costs which it has failed to pay in accordance with the Certificate of costs despite demand from the Advocate.



4. The application is further supported by the affidavit of Morris M Karigi deposed on the August 22, 2022. The deponent reiterates the grounds on the face of the application.

Client's Response

5. The Application is opposed by the Client/Respondent by way of a replying affidavit and grounds of opposition both dated September 23, 2022. The Replying Affidavit was deposed by Francis J. Ngigi, the Managing Director of the Client/Respondent. The deponent avers that the Advocate has not served the Client/ Respondent with any notice and/or demand prior to filing the application. He further reiterates that there is a variance between the sum of money awarded by the taxing master while delivering the ruling orally in court and the amount stated in the typed ruling as stated in the grounds of opposition. The application is therefore premature and incompetent inter alia in that, the Client is contesting the Ruling and the Certificate of Taxation dated August 4, 2022.

Court's Directions

6. The court directed that the Application be canvassed by way of written submissions. The Advocate/Applicant complied and filed his submissions dated February 24, 2023. The Client/Respondent did not file any submissions opting to rely on the replying affidavit and the grounds of opposition on record.

Advocate/Applicant's Submissions

7. The Advocate/Applicant cites Section 51(2) of the [Advocates Act](#) and submits that at the time of filing the instant application, the Certificate of Costs had not been altered and/or set aside. No reference had been filed by the Client/Respondent. The Client's application for leave to file the reference out of time was struck out vide the ruling of February 21, 2023 by this court. It is therefore the Applicant's submission that since the Certificate of costs issued herein has not been set aside, his application is merited and should be allowed as prayed.

Issues for Determination

8. Having perused the Notice of Motion application dated August 22, 2022, the grounds of Opposition and the Replying Affidavit thereto as well as the written submissions filed by Advocate/Applicant, I am of the view that the only issue for determination is whether the court should enter judgment in favour of the Advocate/Applicant as prayed.

Determination

9. It is clear that the Advocate bill of costs dated February 25, 2022, the subject matter of this application was taxed at Kshs 5,735,020.76/-. A certificate of costs was subsequently issued on July 18, 2022.
10. The taxation of the Advocate's bill of costs has not been successfully challenged by the Client in accordance with the provisions of Rule 11 of the [Advocates Remuneration Order](#) which provides that:-

“Where a party is aggrieved by the decision of a Taxing Master, he is required to object in writing by requesting the Taxing Master to give reasons for the items of taxation that he is objecting to and thereafter file reference before a Judge.”



11. Section 51 (2) of the [Advocates Act](#) on the other hand 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.”

12. In the case of [Lubulellah & Associates Advocates vs NK Brothers Limited](#) [2015] eKLR the court observed that;

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his 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. An applicant is not required to file suit for the recovery of costs.”

13. In this matter, the Client/Respondent did not file a reference to challenge the ruling of the Taxing Master. Its application for leave to file the reference out of time was struck out vide the ruling of February 21, 2023 by this court. The issues that the Client/Respondent raises in the grounds of opposition and the Replying Affidavit were the very issues raised in support of the application which was struck out. The court has pronounced itself on the said issues.

14. Accordingly, the court finds that the certificate of taxation issued in this matter has not been challenged as provided for under the [Advocates Remuneration Order](#). That being the case, no other action would be required from this court save to enter judgment in favour of the Advocate which I hereby do. Accordingly, judgement is hereby entered for Mugendi Karigi & Company Advocates for the sum of Kshs 5,735,020.76/- against the Client as prayed.

15. The Advocate/Applicant shall also have the costs of this application.

16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF MAY 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Njagi for the Advocate/Applicant

Mr. Kamau h/b for Machira for the Client/Respondent

Court Assistant: Yvette

M.D. MWANGI

JUDGE

