



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC MISCELLANEOUS APP. NO. 19 OF 2020

IN THE MATTER OF ADVOCATES CLIENT BILL OF COST UNDER THE ADVOCATES REMUNERATION ORDER OF THE ADVOCATES ACT (CAP 16 LAWS OF KENYA)

BETWEEN

NZEI & CO. ADVOCATES.....APPLICANT

VERSUS

EXPORT PROCESSING ZONES AUTHORITY.....RESPONDENT

RULING

1. By a Notice of Motion dated 12th October 2020, and brought under Section 51(2) of the Advocates Act, Sections 1A, 1B, 3, 3A and 27 of the Civil Procedure Act, the Applicant sought for the following orders;

- (a) **That this Honourable Court do enter judgment against the Respondent for a sum of Kshs. 27,410,844.00 (twenty-seven million four hundred and ten thousand eight hundred and fourteen-four Kenya Shillings) being the taxed and certified costs payable to the Applicant by the Respondent.**
- (b) **That this Honourable court do award interest on the aforesaid sum of Kshs. 27,410,844.00 (at court rates from the date of such award until payment in full.**
- (c) **That costs of this application be paid by the Respondent.**

2. The Application is supported by the grounds on its face and on the affidavit sworn by Benjamin M. Nzei, the Applicant herein. The Applicant has averred that he rendered legal services to the Respondent in Machakos ELC Case No. 35 of 2010 but that Respondent refused to pay the appropriate legal fees and disbursements forcing the Applicant to file an Advocate/Client Bill of Costs for taxation by this court's taxing officer; that the Applicant's costs were duly taxed and certified at Kshs. 27,410,844.00; that the Respondent has refused to pay the aforesaid taxed and certified costs despite demand by the Applicant.

3. The Application is opposed. The Respondent filed three sets of grounds of opposition on 26th October 2020, 24th February 2022 and further grounds of opposition on 28th February 2022. The Respondent stated that the application was an abuse of the court process, a waste of precious judicial time and does not meet the threshold for grant of the orders sought; that the Applicant's prayer for interest is unmerited as the certificate of costs neither provided for interest on costs. Counsel relied on the case of *Governors Baloon Safari Limited vs Skyship Company Limited & Another [2020] eKLR* for the proposition that costs do not carry interest without a special order for interest.

4. Further, the Respondent stated that the Application is incompetent, fatally defective, frivolous, vexatious, bad in law and made in bad faith. It was further argued by the Respondent that the Applicant's prayer for costs lacked merit; that the matter was pending before court as the Respondent had filed a reference which stayed further proceedings and subsequent negotiations on settlement of the matter. They also placed reliance on the case of *Labh Singh Harman Singh Ltd vs Attorney General & 2 Others [2016] eKLR* for the proposition that a party against whom costs have been taxed need not pay the costs before their reference is determined.

5. I have considered the Application, the response as well as the record. The issues that arise for determination are;

- (a) Whether judgment ought to be entered for the Applicant against the Respondent in terms of the taxed costs in the sum of Kshs. 27,410,844.00.
- (b) Whether interest on the sum of Kshs. 27,410,844.00 should run from the date the costs were awarded.

6. Section 51(2) of the Advocates Act provides for entry of judgment on taxed costs as follows;

“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 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.”

7. It is therefore clear that where costs have been taxed and certified and the retainer is not in dispute, the court has discretion to enter judgment for the advocate as against the client for the taxed amount, as the certificate of costs bears finality in respect to the costs owed by the client to the advocate, unless the same is set aside.

8. In the case of *Lubulellah & Associates Advocates vs N. K. Brothers Limited [2014] eKLR*, the court rendered itself on the finality of a certificate of costs as follows;

“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 recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the applicant against the Respondent herein for the taxed sum indicated in the certificate of taxation that was issued on 25th November 2012.”

9. In the instant suit, the Applicant’s bill of costs was taxed on 23rd September 2020 in the sum of Kshs. 27,410,844/-. Thereafter, the Respondent filed a reference by way of chamber summons dated 12th October 2020. By the ruling of this court delivered on 29th October 2021, this court dismissed the reference with no order as to costs.

10. That being the case and in view of the fact that the certificate of taxation herein dated 23rd September 2020, has not been set aside, I hereby enter judgment in favour of the Applicant against the Respondent for the sum of Kenya Shillings twenty seven million four hundred and ten thousand, eight hundred and forty four (Kshs. 27,410,844/-). The Applicant is further awarded costs of this application.

11. On the issue of interest on costs, I note that though costs were taxed on 23rd September 2020, the Respondent filed a reference against the costs which was determined on 29th October 2020. But most importantly, is the fact that the Deputy Registrar’s ruling did not award interest on costs. In my considered view, where the taxing master has not awarded interest on costs, the same cannot be awarded as from the date of taxation. I associate myself with the reasoning in the case of *Governors Baloon Safari Limited vs Skyship Company Limited & Another [2020] eKLR* where the court held that costs do not carry interest without a special order to that effect.

12. Having entered judgment for the Applicant as against the Respondent for the sum of Kshs. 27,410,844/-, the Applicant is entitled to interest thereon at court rates from the date of this ruling.

13. In the end, I enter judgment for the Applicant against the Respondent for the sum of Kshs. 27,410,844/- plus interest at court rates from the date hereof. A decree shall issue in terms of the judgment entered herein above to be executed in the usual manner. The costs of the Application shall be borne by the Respondent.

14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 9TH DAY OF MARCH 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

IN THE PRESENCE OF:

MS KUNGU HOLDING BRIEF FOR MS KASHINDI FOR THE RESPONDENT

MR. B. M. NZEI FOR THE APPLICANT

JOSEPHINE MISIGO – COURT ASSISTANT