



**Kinyua & Maingi Advocates v Trident Insurance Company Limited (Miscellaneous Application E013 of 2024) [2025] KEHC 139 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 139 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS APPLICATION E013 OF 2024**

**M THANDE, J  
JANUARY 17, 2025**

**BETWEEN**

**KINYUA & MAINGI ADVOCATES ..... APPLICANT**

**AND**

**TRIDENT INSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. By an application dated 27.6.24, the Applicant seeks that judgment be entered in its favour against the Respondent in the sum of Kshs. 83,910/= as per the certificate of taxation dated 24.5.24. The Applicant also seeks costs and interest on the taxed sum.
2. The certificate of costs was issued pursuant to the taxation of an advocate/ client bill of costs dated 26.1.24 arising from Kilifi CMCC No. E263 of 2022 Timothy Maingi Vidzo v Nelson Bao Taura. The Applicant's case is that the Respondent instructed it to act for the defendant in the suit. Following the Respondent's failure to pay the legal fees, the Applicant filed the bill of costs which was taxed. The certificate of costs that was issued has not been appealed against or set aside. The Applicant thus urged that judgment be entered for the taxed amount as prayed.
3. The Respondent opposed the Application vide a replying affidavit sworn on 18.7.24 by Jane Achieng Omondi, its Deputy Legal Manager. The Respondent denied having failed and refused or neglected to pay the Applicant. It acknowledged that the Applicant sent its final fee note as per the terms of the Service Level Agreement (SLA) which has been in place between them for 3 years. That as the Respondent was auditing and reconciling its accounts, it learnt of the present Application. The Respondent noted that the Applicant had secretly filed the bill of costs which was taxed without it being accorded a fair hearing.
4. The Respondent further stated that it was willing and able to pay the legal fees as per the SLA and that the bill of costs was filed prematurely in violation of the said SLA. Further that the taxed costs



are excessive unreasonable and amount to illegal enrichment. The Respondent urged that the bill of costs be struck out and that the certificate of costs be set aside and it be allowed to pay the Applicant as per the SLA.

5. In a rejoinder vide a further affidavit sworn on 30.7.24 by Njoki Kinyua, the Applicant stated that its fee note which was served upon the Respondent has remained unpaid for 7 months now. Further that the bill of costs and notice of taxation were served upon the Respondent on 23.2.24. Additionally, that the ruling of the taxing master was duly served upon the Respondent. The Applicant further stated that the Respondent's response lacks basis as the law is clear that once costs are taxed and a certificate of costs issued which has not been set aside or altered, in the absence of a reference, no other action would be required from the Court save to enter judgment.
6. The record shows that the bill of costs dated 26.1.24 as well as the notice of taxation dated 15.2.24 were served upon the Respondent on 23.2.24. There is evidence that the Respondent accepted service by stamping and signing the said notice as well as the bill of costs. It cannot therefore be true that the bill of costs was filed and heard in secret as alleged by the Respondent.
7. Having been served with the bill of costs and notice of taxation, the Respondent ought to have participated in the hearing thereof. It is in the taxation proceedings that the Respondent should have presented the SLA on which it has heavily relied, to the taxing master, in opposition to the bill of costs.
8. Being dissatisfied with the taxation of the bill of costs, the Respondent now seeks that the same be struck out and the certificate of costs be set aside on the ground that the amount therein is excessive and in violation of the SLA. It is trite law that any challenge to a taxed amount can only be made to this Court by way of a reference under paragraph 11 of the Advocates Remuneration Order which provides as follows:
  1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
  2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
  3. ...
9. In *Machira & Co. Advocates vs Magugu* [2002] 2 EA 428 Ringera, J. (as he then was) affirmed that it is a reference that taxation may be challenged. He stated:

As I understand the practice relating to taxation of bills of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a Reference to a judge in accordance with paragraph 11 of the Advocates Remuneration Order.
10. This decision was upheld by the Court of Appeal in *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] eKLR where the Court of Appeal stated:

With regard to advocates' bills of costs, we agree with the decision of Ringera J (as he then was) in *Machira vs Magugu*[1] that the Advocates Remuneration Order is a complete code



which does not provide for appeals from taxing master's decisions. Rule 11 thereof provides for ventilation of grievances from such decision through references to a judge in chambers.

11. Flowing from the cited decisions, it is evident that the prayers sought by the Respondent for the striking out of the bill of costs and setting aside of the certificate of taxation are not tenable.

12. I now turn to the prayer sought by the applicant that judgment be entered against the Respondent in terms of the certificate of costs herein. The jurisdiction of this Court to enter judgment for the sum certified to be due to an advocate upon taxation of a bill of costs is contained in the Advocates Act and the Advocates Remuneration Order. Section 51(2) of the Advocates Act provides as follows:

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.

13. The certificate of taxation dated 27.9.24. that was issued by the taxing officer in favour of the Applicant herein has neither been set aside nor altered by the Court. As per the foregoing provision, the certificate of costs is final as to the amount contained therein. Section 51(2) empowers the Court to make such order as it thinks fit, including an order that judgment be entered for the sum certified to be due with costs.

14. Paragraph 7 of the Advocates Remuneration Order allows an advocate to charge interest on his costs and disbursements as follows:

An advocate may charge interest at 14 per cent 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, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.

15. The rate of interest which an advocate may charge is set at 14% per annum. This interest is chargeable from the expiration of 1 month from delivery by the advocate of the bill to his client. There is a rider however. The claim for interest must be raised before the amount of the bill is paid in full.

16. As indicated herein, the Respondent was served with the notice of taxation and bill of costs on 23.2.24 and service was duly accepted. The Applicant is therefore entitled to charge interest from the expiration of one month from the delivery of its bill to the Respondent.

17. In view the foregoing, the Court finds that the Application dated 27.6.24 is merited. Judgment is hereby entered in favour of the Applicant as against the Respondent in the sum of Kshs. 83,910/= as per the certificate of taxation, together with interest at 14% per annum from 23.3.24. The Applicant shall have costs.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 17<sup>TH</sup> DAY OF JANUARY 2025**

.....

**M. THANDE**

**JUDGE**

