



Wekesa & Simiyu Advocates v East African Portland Cement Limited (Miscellaneous Application E272 of 2023) [2025] KEHC 120 (KLR) (Civ) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 120 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E272 OF 2023
RC RUTTO, J
JANUARY 17, 2025

BETWEEN

WEKESA & SIMIYU ADVOCATES APPLICANT

AND

EAST AFRICAN PORTLAND CEMENT LIMITED RESPONDENT

RULING

1. The applicant has filed a Notice of Motion dated 20th August 2024 invoking Article 159 (2) of the Constitution, sections 1A, 1B and 3A of the Civil Procedure Act, section 51 (2) of the Advocates Act, order 51, rule 1 of the Civil Procedure Rules and paragraph 7 of the Advocates Remuneration Order. It prays for the following:
 1. That judgment be entered in favor of the advocate/applicant as against the client/respondent for the sum of Kshs.868,172.00 with interest at 14% per annum from 21st March 2023, being 30 days from delivery of the advocate/client bill of costs to the client/respondent, until payment in full;
 2. That the costs of this Notice of Motion be borne by the client/respondent and be assessed and set by this Honorable Court.
2. The application is supported by the grounds in the body of the Motion and the supporting affidavit of Evalyne Nthenya Mulunye, an advocate working in the nature and style of the applicant sworn on 20th August 2024. The applicant summarized the facts leading up to the filing of the bill of costs to contend that by the ruling of the taxing master delivered on 8th July 2024, the applicant's advocate-client bill of costs dated 5th April 2023 was taxed at Kshs. 868,172.00 The applicant was issued with a certificate of costs for taxation on 5th August 2024. The same has never been challenged by way of reference or in any way varied or set aside. Since successful conclusion of its bill of costs, the applicant notified the



respondent to settle the sums due. However, the same remains unpaid. For those reasons, the applicant sought interest at the rate of 14% per annum from 21st March 2023, one month after filing its bill of costs. Justifying the award on interest, the applicant stated that the reality of inflation, coupled with the six-year relationship the parties herein had, was sufficient grounds to granted the applicant to benefit from that amount.

3. In spite of proper service of the application, the respondent elected not to file any response to it. The application was heard on 18th November 2024. This court was satisfied that the respondent was properly and duly served with the day's hearing date but failed to attend court either personally or through its counsel. The applicant adopted its written submissions dated 20th August 2024 which extensively argued that judgment ought to be entered on the certificate of costs, it was entitled to interest at 14% per annum from 21st March 2023 until payment in full and costs of the application. Citing several decisions of the court, the applicant submitted that it had met the rudimentary requirements of section 51 (2) of the *Advocates Act*, section 26 (1) of the *Civil Procedure Act* and paragraph 7 of the *Advocates Remuneration*.
4. Section 51 (2) of the *Advocates Act* provides:

“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. It is trite law that section 51 (2) of the *Advocates Act* governs to the mode of recovery of taxed costs. In this instance, the applicant's advocate-client bill of costs dated 5th April 2023 was taxed on 8th June 2024 in the sum of Kshs. 868,172.00. A certificate of costs for taxation was issued on 5th August 2024. The respondent has not filed any reference or challenged that award by either setting aside or varying it. I therefore find that the applicant is entitled to judgment in the said award as prayed. Accordingly, judgment is entered in favor of the applicant in the sum of Kshs. 868,172.00. The applicant shall also be awarded costs of this application and interest therein at the rate of 14% from 21st March 2023 until payment in full.

It is so ordered

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 17TH DAY OF JANUARY 2025

For Appellant:

For Respondent:

Court Assistant:

