



REPUBLIC OF KENYA



Caleb t/a M Ananda & Company Advocates v Wayua & 2 others (Miscellaneous Application E060 of 2024) [2025] KEHC 4053 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E060 OF 2024**

F WANGARI, J

MARCH 6, 2025

BETWEEN

**MANASE ANANDA CALEB T/A M ANANDA & COMPANY
ADVOCATES APPLICANT**

AND

IRENE WAYUA 1ST RESPONDENT

NTHENYA MULINGE 2ND RESPONDENT

**ELIZABETH KILOME MULINGE ALIAS KILOME MUELLER 3RD
RESPONDENT**

RULING

1. For ruling is the Applicant's application dated 17th September, 2024 brought under the provisions of sections 1A, 1B and 3A of the Civil Procedure Act, section 51 (2) of the Advocates Act and all other enabling provisions of the law. It seeks the following orders: -
 - a. That the Certificate of Costs dated 16th August, 2024 for the amount of Kshs. 986,118/= be deemed as the Judgement and Decree of this Honourable Court;
 - b. That interest of 14% to accrue from the date of issue of Certificate of Costs till payment in full; and
 - c. That costs of this Application be provided for.
2. The grounds in support of the application are that the Applicant filed Advocate/Client Bill of Costs dated 15th April, 2024 arising from Mombasa High Court Succession Cause No. 367 of 2015. The Respondents appointed the Applicant's firm of advocates to represent them in the said succession matter. The Advocate/Client bill of costs dated 15th April, 2024 was taxed at Kshs. 986,118/= by the court's Deputy Registrar and a Certificate of Costs was issued on 28th August, 2024.



3. The Applicant states that the Respondents have not filed a reference in regards to the said taxation order and that the Certificate of Costs has not been set aside since it was issued. The Applicant contends that he is unable to carry out the execution process to recover the amount as there is no decree. The Applicant invokes the aid of the overriding objective under sections 1A, 1B and 3A of the Civil Procedure Act and section 51 (2) of the Advocates Act so as not to prolong proceedings and add on to costs.
4. The application is supported by the affidavit dated 24th September, 2024 sworn by the Applicant. Other than the attached annexures, the affidavit restates more or less the grounds in support of the application and I thus see no reason to rehash the same.
5. The Respondents oppose the application through grounds of opposition dated 3rd November, 2024. According to the Respondents, the application is premature as they are yet to be provided with the Deputy Registrar's reasons for finding in favour of the Applicant in the Applicant's Bill of Costs dated 15th April, 2024.
6. They state on 29th August, 2024, their advocates wrote to the Deputy Registrar objecting to her decision with respect to several taxed items which objection letter was uploaded onto the CTS platform, filed and served on the Applicant. To date, the Respondents are yet to receive a response to the said objection.
7. They further contend that the Advocates (Remuneration) Order at paragraphs 11 (1) and (2) lays out the procedure to be followed when a party is aggrieved by the decision of the taxing officer and in the absence of the Deputy Registrar's reasons as stated, the Respondents have no basis upon which to file a reference before this court challenging the taxation. The Respondents thus pray that the application be dismissed with costs.
8. Directions were taken to have the application disposed off by way of written submissions. The Applicant's submissions are dated 27th November, 2024. The Applicant in support of his position relies on the provisions of section 51 (2) of the Advocates Act and the case of Vincent Kibiwott Rono v Abraham Kiprotich Chebet & Another [2022] eKLR.
9. On their part, the Respondents filed their submissions which are dated 28th January, 2025. They place reliance on paragraphs 11 (1) and (2) of the Advocates (Remuneration) Order, the case of Magdalena Alphonse Chemosorb v Cheposupko Lonyareng & 5 Others [2021] eKLR and the definition of the term "shall" as employed under paragraph 11 (2) from the Black's Law Dictionary, 12th Edition.

Analysis and Determination

10. This Court has carefully considered the application, the grounds of opposition, parties' rival submissions, the authorities cited and the law and the issues that fall for the Court's determination are as follows: -
 - a. Whether the application dated 17th September, 2024 is premature;
 - b. If the answer to (a) above is in the affirmative, what orders ought to issue; and
 - c. What is the order as to costs?
11. At the onset, it is not in dispute that there is a Certificate of Costs dated 16th August, 2024 and issued on 28th August, 2024. The said certificate has neither been stayed nor set aside by a superior court. The Respondents' contention is that to date, they have not been supplied with the Taxing Master's



reasons for the items they objected to. For that reason, they have been unable to file a reference on their objection.

12. Does failure to give reasons for the objected items inhibit a party from filing a reference? I note that both parties have each cited decided cases from this court and from courts of equal status supporting their respective positions. They are persuasive decisions which are not binding on this court of concurrent jurisdiction and equal status as this court. In the premises, I shall find my own bearing on the issue having regard to the overriding objective of the law as contemplated under Article 159 (2) (d) of the Constitution.
13. The issue of immaturity was considered by this court in Vincent Kibiwott Rono v Abraham Kiprotich Chebet & Another (*supra*) where the court observed as follows: -

“...The taxation ruling was delivered on 17th January 2022. The applicants wrote to the taxing officer on 19th January 2022 notifying him of the items that he wished to object to. There are no reasons that have been presented by the taxing officer as per the provisions of Rule 11(2) of the Advocates (Remuneration) Order. However, it is a judicial principle that a ruling contains reasons for the decision given...”
14. The court in the same decision relied on the case of *Abmed Nassir v National Bank of Kenya Ltd* [2006] E.A where it was observed as follows: -

“...Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Hon. Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of Sub-rule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling...”
15. There is a ruling dated 16th August, 2024 where the only item interfered with is instructions fees. The other items were found to be drawn to scale. The Respondents’ insistence on reasons would be simply engaging in duplication. I therefore hold that the application is not premature and is properly before the court.
16. Having found as above, section 51 (2) of the Advocates Act decrees 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.”
17. It is therefore my view that where an advocate’s costs have been taxed and a certificate issued, the only bar to the entry of judgement is if there is a dispute as to the retainer. No dispute as to retainer was furnished before this court and since the Respondents only opted to file grounds of opposition, even if any was there, none could be discerned from the grounds.



18. In *Mbai & Kibuthu Advocates v Mbo-I-Kamiti Farmers Company Limited* Nairobi (Milimani) HCMA No. 659 of 2004, Ochieng', J (as he then was) held that where there is no dispute as to the retainer and the bill has been taxed, the certificate of the taxing officer by whom the bill has been taxed shall, unless set aside or altered by the Court, be final as to the amount of costs covered thereby. Accordingly, the Court proceeded to grant judgement in favour of the applicant.
19. In other words, once a certificate of the taxing officer by whom an advocate and client bill has been taxed, unless the same is set aside or altered by the Court, it is final as to the amount of the costs covered thereby and there is no need to file a suit for recovery therefore and the Court is thereby empowered to order that judgment be entered for the sum certified to be due with costs. In this case as retainer is not disputed, there is no reason why judgement cannot be entered in terms of the Certificate of Costs which I hereby allow in terms of prayer (1) of the application.
20. On the prayer for interest at 14%, paragraph 7 of the [Advocates \(Remuneration\) Order](#) provides 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.”
21. From the foregoing, it is clear that an advocate is entitled to charge interest at 14 per cent per annum after expiry of one month from the delivery of the Bill. In this case it is contended which contention is not disputed that the Bill in issue was served on 3rd May, 2024. Therefore, unless the Respondents paid or tendered the amount in the Bill in full, the Applicant is entitled to the said interest. There is neither of payment of the amount claimed nor tendering of the same. It has been held that where the Client neither pays the same nor tenders it, he runs the risk of having to contend with the payment of interest from the date commencing one month from the date of delivery of the Bill till payment in full.
22. Consequently, judgement is hereby entered in favour of the Applicant/Advocate in the sum of Kshs 986,118/= with interest at 14% from 3rd June, 2024 till payment in full together with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6TH DAY OF MARCH, 2025

.....

F. WANGARI

JUDGE

In the presence of;

Mr. Ananda Advocate for the Applicant;

Mr. Owino Advocate for the Respondents;

Ms. Salwa, Court Assistant

