



Lubulellah & Associates v Vishnu Builders & Developers Limited (Miscellaneous Case E952 of 2023) [2025] KEHC 3338 (KLR) (Commercial and Tax) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CASE E952 OF 2023**

BK NJOROGE, J

MARCH 20, 2025

BETWEEN

LUBULELLAH & ASSOCIATES ADVOCATE

AND

VISHNU BUILDERS & DEVELOPERS LIMITED CLIENT

RULING

1. The Advocate/Applicant filed the Notice of Motion dated 9th July 2024 seeking the following orders;
 - a. The Court to enter Judgment and issue a Decree in favour of the Applicant against the Respondent on the amount of Kshs.1,426,888/- certified on the Certificate of Taxation herein dated 29th April 2024, together with interest at the rate of 14% per annum from the 1st November 2023 being the date of lodgement of the Bill of Costs herein/filing of this suit.
 - b. The costs of this application be provided for.
2. The Application was supported by the Affidavit of Eugene Lubale Lubulellah, who stated that the Advocate and Client Bill of Costs herein has been taxed, and a Certificate of Taxation issued. That this is in conformity with the rules and procedure.
3. Therefore, the Advocate wishes to proceed and realize the costs taxed herein. Hence, a judgment and Decree are required. That it is just and fair that the orders sought herein be granted.
4. The Application herein is unopposed, and the Court has considered the Advocate/Applicant's Application and written submissions. The Court frames the following single issue for determination;
 - a. Whether the Certificate of Costs issued by the Taxing Officer should be adopted as a Judgment of the Court?



Analysis

5. The facts of this matter are fairly straight forward. The Applicant herein represented the Respondent in arbitration proceedings. The Respondent failed to pay the Applicant the requisite legal fees for the representation during the Arbitration process. This prompted the Applicant to file an Advocate-Client Bill of Costs.
6. The Respondent was served with the Advocate-Client Bill of costs and the Notice of Taxation, but failed to file any response or objection thereto.
7. Further to the above, the Applicant filed an Affidavit of Service by Josephat Kutekha Khatikwi sworn on 1st October 2024 confirming that the Respondent herein was served with the present Application and has failed and/or ignored to file a response thereto. The Application is thus unopposed.
8. The Application has been brought under the provision of Section 51 of the Advocates Act which provides as follows:
 - “(2) 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.”
9. Further, in the case of *Musyoka & Wambua Advocates Vs Rustam Hira Advocate* (2006) eKLR it was held: -
 - “Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....”
10. In the present Application, the Certificate of Taxation has not been set aside, altered or challenged; thus, the issue of the Advocates cost is conclusive. Therefore, the Court will not interfere with the exercise of discretion by the Taxing Officer or the ensuing Certificate of Taxation.
11. Further to the above, the Advocate sought interest at the rate of 14% per annum from 1st November 2023 being the date when the Bill of Costs was lodged.
12. The issue of awarding interest on the taxed amount at 14% p.a. is provided under the provisions of Rule 7 of the Advocates Remuneration Order, which provides: -
 - “An Advocate may charge interest at 14% 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, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”
13. The Court notes that the issue of interest was raised at the delivery of the Bill of Costs to the Respondent. Thus, the rate of interest awardable is 14% per annum and is applicable from 1st November 2023.



14. In light of the above, the Court finds that the application is meritorious and judgment is entered for Kshs.1,426,888/- as certified on the Certificate of Taxation dated 29th April 2024, together with interest at the rate of 14% per annum from the 1st November 2023.
15. As to Costs the same follow the event. The Applicant is awarded the Costs of this application.

Determination

16. The Advocate/Applicant's Application by way of a Notice of Motion dated 9th July 2024 is allowed as follows;
 - a. The Court enters Judgment and issues a Decree in favour of the Applicant against the Respondent on the amount of Kshs.1,426,888/- certified on the Certificate of Taxation herein dated 29th April 2024, together with interest at the rate of 14% per annum from the 1st November 2023 being the date of lodgement of the Bill of Costs herein/filing of this suit.
 - b. The costs of this application are awarded to the Applicant.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH MARCH, 2025

NJOROGE BENJAMIN K.

JUDGE

In the presence of: -

.....for the Applicant

.....for the Respondent

Court Assistant.....

