



Lubelellah & Associates Advocates v China Young Tai Engineering Company Limited (Civil Appeal E818 of 2021) [2025] KEHC 4354 (KLR) (Commercial and Tax) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E818 OF 2021
BK NJOROGE, J
APRIL 3, 2025**

BETWEEN

LUBELELLAH & ASSOCIATES ADVOCATES ADVOCATE

AND

CHINA YOUNG TAI ENGINEERING COMPANY LIMITED RESPONDENT

RULING

1. This is a Ruling in respect of the Advocate/Applicant's Notice of Motion dated 22nd November, 2022. It seeks the following orders: -
 - a. That the Court be pleased to enter judgment against the Respondent on the amount of Kenya Shillings Forty-Four Million Two Hundred and Eighty-Two Thousand, Five Hundred and Seventy-Seven and Sixty-Two Cents (Kshs.44,282,577.62) certified on the certificate of taxation herein dated 21st November, 2022.
 - b. That the judgement entered upon the sums certified in the certificate of taxation do attract interest at the rate of 14% per annum from 2nd November, 2021 being the date of service of the final fee note upon the Respondent.
 - c. That a decree issues in respect of the judgement entered herein above together with interest and costs of this application, and the Applicant be at liberty to execute in satisfaction of the same in such manner as a regular decree of this Honourable Court.
 - d. That the costs of this application be provided for.
2. The application is supported by the affidavit of Eugene Lubale Lubulellah. He deponed that the Advocate Client bill of costs herein has been taxed and a certificate of taxation issued. That this is in conformity with the rules and procedures.



3. Therefore, the Advocate wishes to proceed and realize the costs taxed herein. Hence a judgment and a decree are required. That it is just and fair that the orders sought herein are granted.
4. The application is opposed by the Client/Respondent. This is through the Replying Affidavit of Qian Guo Junsworn on 21st June, 2023 with annexures.
5. Directions were issued that the application be disposed of by way of written submissions. The Court has considered the Applicant's written submissions dated 6th November, 2024 as well as the Respondent's written submissions dated 12th November, 2024.

Issues for Determination

6. The court frames a single issue for determination as follows;
 - a. **Whether the certificate of costs issued by the Taxing Officer should be adopted as a judgement of the Court.**

Analysis

7. This is an application for enforcement of payment for an Advocate's costs.
8. The Advocate claims that there was a retainer between his firm and the Client. A Bill of Costs dated 4th November, 2021 was filed and taxed against the Client. This was for a sum of Ksh.44,282,577.62. A Certificate of Costs dated 21st November, 2022 has been issued. The same has not been set aside.
9. That prior to filing the bill of costs, the Advocate had served the Client with a final fee note dated 2nd November, 2021 on the same date. The Advocate therefore seeks interest on the bill of costs at the rate of 14% per annum from 2nd November, 2021.
10. The response by the Respondent is that it has filed a Reference against the ruling on the bill of costs. The reference was filed in Milimani High Court Miscellaneous No. 823 of 2022 China Young Tai Engineering Company Limited v- Lubulellah & Associates Advocates.
11. In the submissions of the Respondent, it concedes that the by a Ruling dated 19th September, 2024, the Reference was dismissed. The Respondent states that the reason for the dismissal was that there was no Ruling of the Taxing Master even on the Case Tracking System (CTS). That they have through their Advocates written severally seeking for a copy of the Ruling of the Taxing Master without any success.
12. They therefore pray that the application be stayed pending a review of the Learned Judge's Ruling, once the elusive Ruling on costs is traced.
13. In any event, the Respondent submits that interest should not apply, as there has been active litigation between the parties.

Whether the Certificate of Costs Issued by the Taxing Officer should be Adopted as a Judgment of the Court.

14. The application has been brought under the provision of Section 51 of the [Advocates Act](#) which provides as follows;
 51. General provisions as to taxation



- (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
- (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.

15. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* [2006] eKLR, the Court held as follows;

“Sub-section (2) of section 51 of the *Advocates Act* gives the court the discretion to make such order in relation to a certificate of taxation that has not been set aside or altered as the court 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.....

....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 the discretion to enter judgment upon 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 the law, in addition to the filing of suit, where such suit would be unnecessary because, one, the certificate of taxation has not been set aside or altered and, two, there is no dispute as to retainer. Unless there is any other matter as would require ventilation in a trial, what would be the necessity of filing suit? In my view the court would be entitled to enter judgment under section 51(2) even where there is no suit filed. I so hold.”

16. In the case presented before this Court, there has been an unsuccessful challenge on the Ruling on the Advocates costs. The Certificate of Costs still remains and has not been set aside or altered or stayed. Even the application for review of the Ruling of the Learned Judge is an averment in the submissions made before this Court by Counsel for the Respondent. There is no proof of filing of such an application. To this Court the Certificate of Costs is valid and remains conclusive on the issue of the Advocates costs. At this point in time, the Court will not interfere with the decision of the Taxing Master on the taxation of costs. This Court is not sitting on a reference on that issue.

17. As to the prayer for interest on the costs, the Court refers to Rule 7 of the Advocates Remuneration Order. It states as follows;

7. Interest may be charged

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.

18. The Court notes a letter dated 2nd November, 2021 attached to the affidavit in support of the Motion. The letter was addressed to the Respondent, attaching the final fee note. The fee note is also dated 2nd November, 2021. It was a fee note for Ksh.46,297,469.54. There is also a letter dated 26th November, 2021 being an email from the Advocate forwarding the letter of 2nd November, 2021 and the final fee note.



19. To this Court, the letter of 26th November, 2021 forwarded the final fee note as there is no other document presented as proof of delivery of the fee note. The thirty (30) days would have elapsed on 26th December, 2021. The interest would have accrued from this date.
20. The Court notes therefore that the issue of interest at 14% per annum was raised at the same time when the final fee note was raised. Thus, the applicable rate of interest awarded is 14% per annum from 26th December, 2021.
21. In light of the above, the Court allows the Notice of Motion, save that interest will accrue from 26th December, 2021.
22. As to costs, the same follow the event. The successful Advocate/Applicant is awarded costs.

Determination

23. The Notice of Motion dated 26th November, 2022 is allowed as follows;
 - a. That judgment is entered against the Respondent on the amount of Kenya Shillings Forty-Four Million Two Hundred and Eighty-Two Thousand, Five Hundred and Seventy-Seven and Sixty-Two Cents (Kshs.44,282,577.62) certified on the certificate of taxation herein dated 21st November, 2022.
 - b. That the judgement entered upon the sums certified in the certificate of taxation do attract interest at the rate of 14% per annum from 2nd December, 2021 being the date of service of the final fee note upon the Respondent.
 - c. That a decree issues in respect of the judgement entered herein above together with interest and costs of this application, and the Applicant be at liberty to execute in satisfaction of the same in such manner as a regular decree of this Honourable Court.
 - d. That the costs of this application be borne by the Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF APRIL, 2025

NJOROGE BENJAMIN K

JUDGE

In the presence of;

.....for the Applicant

.....for the Respondent

Luyai – Court Assistant

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