



Eric Ntambo & Co Advocates v Trident Insurance Co Ltd (Miscellaneous Application E124 of 2024) [2025] KEHC 12108 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E124 OF 2024**

F WANGARI, J

MAY 15, 2025

BETWEEN

ERIC NTAMBO & CO ADVOCATES APPLICANT

AND

TRIDENT INSURANCE CO LTD RESPONDENT

RULING

1. The ruling is in respect of the Notice of Motion dated 03/09/2024. The application seeks the following orders: -
 - a. That the suit be consolidated with Mombasa High Court Misc. Applications No. E077 and E078 of 2024.
 - b. That judgment be entered in favour of the Applicant against the Respondent for the consolidated sum of Kshs. 665,328/= being total certified costs due to the applicant as against the Respondent in the matter herein plus interest.
 - c. That costs of this application be provided for.
2. The Applicant stated that the Respondent also retained the legal services of the Applicant in Mombasa High Court Misc. Applications no. E077 & E078 of 2024, whereby the Respondent failed to pay the legal fees necessitating the filing of the Bills of Costs which were taxed at a consolidated sum of Kshs. 665,328/= and Certificates of Costs issued to that effect.
3. The Respondent filed a Replying Affidavit dated 07/10/2024. It was stated that the application by the Applicant was fundamentally flawed and fatally defective, as the application ought to have been filed separately for each certificate of taxation.



4. The Respondent sought to have the application dismissed with costs and in the alternative, these proceedings be stayed to allow the Respondent challenge the Certificates of Taxation separately.
5. The court directed that the application be disposed off by way of written submissions. Both parties complied by filing their rival submissions and the supporting authorities.

Analysis and determination

6. Having considered the application, written submissions, cited authorities and the law, the following are the issues for determination: -
 - a. Whether the matters ought to be consolidated as prayed.
 - b. Whether the judgment should be entered as prayed.
 - c. Who bears the costs:
7. On the first issue, the suits being sought to be consolidated involves the same parties and over the same subject matter. Under Section 1B of the *Civil Procedure Act*, this court has a duty in furthering the overriding objective specified in Section 1A of the Act. This includes the expeditious disposal of matters and efficient use of judicial resources.
8. The Supreme Court pronounced itself on consolidation of suits in the case of *Law Society of Kenya v Centre for Human Rights & Democracy & 12 others* [2014] eKLR. This case was also cited by the Applicant. It was held that “The essence of consolidation was to facilitate the efficient and expeditious disposal of disputes.....”
9. Further, where there is a common question of law or facts, rights or reliefs claimed in respect to the same transaction, it is desirable to consolidate the matters. (See *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2020] eKLR).
10. From the documents attached to the application, it is a fact that the 3 matters that are sought to be consolidated refer to the same parties, the reliefs claimed arises from the same transaction. I therefore find that there shall be no prejudice which shall be suffered by the Respondent if the application for consolidation is allowed.
11. On the second issue, there is no contest that the respective Bills of Costs were taxed on 03/07/2024 and Certificates of Taxation issued on 17/07/2024 for Kshs. 180,910/= in HCC Misc App. No. E124 of 2024, Kshs. 125,078/= and Kshs. 359,340/= in HCC Misc. App. No. E077 and E078 of 2024 respectively, giving a total of Kshs. 665,328/= which the Applicant seeks to have entered as judgment.
12. The application is founded on Section 51 (2) of the *Advocates Act*. It 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 above mentioned provision was reiterated in the case *Tom Ojienda & Associates v Nairobi City County* (Miscellaneous Application E620 of 2019) [2022] eKLR, it was held thus: -

“The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:



- a) The costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
 - b) The Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
 - c) There is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.”
14. The Certificate of Taxation has not been set aside. The Respondent states that they were not aware when the taxation was being carried out, and that they have the intention of setting aside the Certificate of Costs. In the Replying Affidavit dated 07/10/2024, the Respondent stated that it was intending to file proceedings to set aside the Certificate of Taxation.
15. Further, in the Respondents written submissions dated 27/01/2024, which was over 3 months after filing of the Replying Affidavit, the Respondent still stated that it had the intentions of challenging the Certificates of Taxation. As I settled to write this ruling, no pleadings had been filed seeking to set aside the Certificates of Taxation.
16. Under the circumstances, it can properly be deemed that the Respondent has got no intentions of seeking to set aside the Certificate of Taxations. This court finds that this is a suitable case for it to exercise its discretion in favour of the Applicant and therefore proceeds to enter judgment against the Respondent for the consolidated certified sums.
17. On the issue of interests on the taxed costs, Rule 7 of the Advocates Remuneration Order is the operative provision. It provides as follows: -
- “An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiry to one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount has been paid or tendered in full.”
18. The Appellant deponed in the Further Affidavit dated 17/10/2024, that the Respondent was served with a Bills of Costs which it failed to settle. The attached Bills of Costs have the stamp impression of the Respondent company. Same case applies to the Taxation Notices attached. I am satisfied that the Respondent was well served as per the Affidavit of Service dated 06/06/2024. I thus proceed to award interest at 14% on the taxed costs.
19. As to the issue of costs, the same follows the event. That is what Section 27 of the *Civil Procedure Act* decrees. However, this court has the discretion to direct otherwise. The Applicant having succeeded, I see no reason why I should deny him costs which I so award.
20. Following the foregoing discourse, the upshot is that the following orders do hereby issue: -
- a. That the Notice of Motion dated 03/09/2024 has merits and is allowed as prayed.
 - b. Costs awarded to the Applicant

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 15TH DAY OF MAY, 2025.

.....
F. WANGARI
JUDGE



In the presence of:

M/S Agote Advocate h/b for Ntabo Advocate for the Applicant

Mr. Marwa Advocate for the Respondent

M/S Norah, Court Assistant

