



**In re Nzama Kuu Cement Company Limited (In Liquidation) (Winding Up Cause 42 of 1993) [2025] KEHC 5746 (KLR) (Commercial and Tax) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5746 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**WINDING UP CAUSE 42 OF 1993**  
**NW SIFUNA, J**  
**MAY 7, 2025**  
**IN THE MATTER OF THE COMPANIES ACT, LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF NZAMA KUU CEMENT COMPANY LTD (IN LIQUIDATION)**  
**IN THE MATTER OF**  
**OM DA COSTA LUIS ..... APPLICANT**

**RULING**

1. This ruling is on the Notice of Motion Application dated 20<sup>th</sup> December 2021 which is by the law firm of Shapley Barret Co. Advocates. The same is supported by a Supporting Affidavit. The Application is seeking leave for the said firm to cease acting for the liquidator, and for it an order directing the liquidator to pay it forthwith its taxed costs of Ksh2,654,466=.
2. The Application is based on the following grounds listed in it:
  1. That this Cause relates to the Liquidation and/or winding up of the Company Known as Nzama Kuu Cement Limited.
  2. That the Liquidator's appointment was made vide the Orders issued herein o 21<sup>st</sup> November 1994 and made pursuant to a voluntary winding up Petition filed by the Directors/ shareholders of the Company.
  3. That since then, 27 years ago, the law firm of Shapley Barret and Company Advocates, has been on record for the Liquidator.
  4. That the Liquidator has stated that he has collected all assets and payments that could practically be recovered and that he does not expect to collect any more or further assets or debts payable to the Company.



5. That the Liquidator has stated further that as at 31<sup>st</sup> December 2020, he was holding a total amount of Ksh 16,832,689/47 deposited in two respective Banks.
  6. That by the orders made herein on the 3<sup>rd</sup> day of November 2017 by Hon. Lady Justice Amin, the Court directed the Liquidator to commence steps to finalize the winding-up process and gave directions on the final steps and processes to be undertaken by the Liquidator including pa-out of funds.
  7. That such directions included taxation of the Advocates' and the Liquidator's fees, convening of a Final Creditor's meeting, publishing of notice of such meeting in the Kenya Gazette and in one newspaper with national circulation and filing of relevant Reports in Court.
  8. That with the assistance and guidance of the Advocates, the Liquidator has now fully complied with the said directions and the Liquidator's and the Advocate's respective Bill of Costs have now been taxed by this Court.
  9. That the Advocate's Bill of Costs was taxed on 18<sup>th</sup> day of 2019 by the Deputy Registrar, Hon. Elizabeth Tanui at the sum of Ksh2,654,466=.
  10. That regrettably, the Liquidator and the Advocates have had a difference of opinion on material issues necessitating the Advocates to reach the decision to cease acting.
  11. That it is therefore fair and just that as the Advocates cease acting the taxed legal fees be also paid forthwith.
3. The Application having been opposed by the liquidator, proceeded by way of written submissions.

### **Analysis and Determination**

4. Institution fees is usually due at the commencement of instructions and not the end of litigation. They are not contingent upon the eventual outcome of the suit. Hence are due, owing and payable, as soon as the Client's instructions are accepted.
5. Besides, legal fees once taxed and there is a Certificate of Taxation becomes owing, subject only to Section 45 and 51(2) of the *Advocates Act* (Cap 16 Laws of Kenya), and Section 21 of the *Government Proceedings* if the Client is the Government.
6. In Liquidation Proceedings, where an Advocate is employed by the liquidator, the winding up process and the instructions are by the Liquidator. Hence the legal fees for such an Advocate are not an ordinary debt of the Company, that should wait and que to be considered with its other creditors after the process.
7. They are a debt *sui generis* that does not have to wait like those of Advocates that had been appointed by the Company itself. While the latter ought to wait and que with the rest of the debts, those incurred on the winding up proceedings, ought not wait or que.
8. These costs are due and payable subject to availability of funds. Where funds for their payment have been set aside such as in this particular case, they should be paid forthwith. On this I am further fortified by the holding of Mabeya J in *Trust Bank Ltd v. Ajay Shah & 3 Others* [2012] eKLR.
9. In reaching a determination on this Application, I have read the Application, the Supporting Affidavit, the Opposition to it, as well as the rival submissions of the parties. Upon distilling the same and the relevant legal provisions, I find the Application to be meritorious, hence hereby allowed it with costs.



10. With the consequences, that the law firm of Harpley Barret & Co. Advocates, is hereby granted leave to cease acting for the liquidator in this matter. I further order that it be paid its taxed Advocate-Client costs of Ksh 2,654,466=.

**DATED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF MAY 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

