



**Lubellah & Associates Advocates v China Young Tai Engineering
Company Ltd (Miscellaneous Application E818 of 2021)
[2024] KEHC 1019 (KLR) (Commercial and Tax) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E818 OF 2021**

**A MABEYA, J
FEBRUARY 9, 2024**

BETWEEN

LUBELLAH & ASSOCIATES ADVOCATES APPLICANT

AND

CHINA YOUNG TAI ENGINEERING COMPANY LTD RESPONDENT

RULING

1. The application before Court is dated November 22, 2022. It is brought under section 51 of the Advocates Act Chapter 16 Laws of Kenya, Rule 13A Advocate Remuneration Rules, section 3A, 63e of the Civil Procedure Rules, Order 41 rule 1 of the Civil Procedure Rules.
2. The application seeks judgment against the respondent for Kshs 44,282,577.62 together with interest thereon at 14% as per the certificate of taxation dated 21/11/2022.
3. The application was supported by the grounds on the face of it and by the affidavit of Eugene Lubale Lubelellah sworn on even date. The applicant stated that the Advocate client bill of costs was taxed at Kshs 44,282,577.62 and a Certificate of Taxation was issued on 21/11/2022. That the applicant is desirous of realizing the costs awarded and therefore seeks to have the judgment be issued as per the certificate of taxation.
4. The respondent opposed the application vide a replying affidavit dated 21/11/2023 sworn by Qian Guo Jun. It contended that it had filed a reference pursuant to the ruling delivered by the taxing master. That the reference was filed in MISC E823 of 2022 vide a Chamber Summons dated 17/11/2022. That the applicant was aware of the reference and had filed a preliminary objection with respect to the same. That the reference had not been determined and it would be rendered nugatory if the application is allowed.



5. The applicant filed its submissions dated 14/7/2023. Counsel submitted that the reference was filed in a separate suit from which the taxation was made and therefore irregular and could not stand. That the court had no jurisdiction to deal with the reference which was filed in a different suit and that there was no order for stay of proceedings of this case pending determination of the reference.
6. I have considered the rival averments and the submissions. The main issue is whether judgment should be entered as per the Certificate of Taxation. The applicable law is found in Section 51 (2) of the Advocates Act which provides that: -

“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.”
7. The applicant’s case is that a Certificate of Taxation was issued on 21/11/2022 for the sum of Kshs 44,282,577.62. The respondent on its part opposed the application stating that it had filed a reference against the certificate of taxation in Misc E823 of 2022.
8. I have perused the record and it is evident that the respondent filed a reference vide a chamber summons application dated 17/11/2022. The reference was filed before the present application however in a different file.
9. In Lubullellah & Associates Advocates v N. K. Brothers Limited [2014] eKLR the court observed that: -

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs.
10. The court has the jurisdiction to enter judgment on certificate of taxation when the retainer is not disputed and when there is no reference. There being a reference preferred against the taxation, it would be prejudicial to determine the present application before that reference is determined. The application has to await the determination of the reference. The fact that the reference was not filed in the same file is not fatal as the same can be cured via consolidation.
11. Accordingly, this court finds that the application is premature and the same is held in abeyance pending the determination of the reference.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2024.

A. MABEYA, FCI Arb

JUDGE

