



Kinyua & Maingi Advocates v Trident Insurance Co. Limited (Miscellaneous Civil Application E002 of 2023) [2024] KEHC 11309 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 11309 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KWALE
MISCELLANEOUS CIVIL APPLICATION E002 OF 2023**

**OA SEWE, J
JULY 25, 2024**

BETWEEN

KINYUA & MAINGI ADVOCATES APPLICANT

AND

TRIDENT INSURANCE CO. LIMITED RESPONDENT

RULING

1. Before the Court for determination is the Notice of Motion dated 18th April 2024. The application was filed by the applicant, M/s Kinyua & Maingi Advocates under Section 51(2) of the [Advocates Act](#), Chapter 16 of the Laws of Kenya, for orders that:
 - (a) Judgment be entered in favour of the applicant against the respondent for the sum of Kshs. 112,240/= only, being the certified costs due to the applicant as against the respondent.
 - (b) The costs of the application be paid to the applicant by the respondent together with interest on the taxed sum.
2. The application was predicated on the grounds that the Advocate/Client costs due to the applicant herein have been taxed in the sum of Kshs. 112,240/= and a Certificate of Taxation issued to that effect; that the respondent has neglected, refused and/or failed to settle the taxed costs; that there is no dispute as to the retainer; and that it is only fair and just in the circumstances that judgment be entered for the amount of Kshs. 112,240/= being the sum certified to be due to the applicant as against the respondent.
3. The application was supported by the affidavit of Njoki Kinyua, Advocate, sworn on 18th April 2024, to which she annexed copies of the Letter of Instructions and the Certificate of Taxation. The applicant also exhibited a copy of a letter dated 18th April 2024 forwarding a copy of the Ruling on Taxation as well as a copy of the Certificate of Taxation to the respondent. The documents were accordingly marked as Annexures “NK-1”, “NK-2” and “NK-3”.



4. The applicant averred that, thus far, the Ruling on Taxation has not been appealed, reviewed or set aside; and yet the respondent has failed, refused and/or neglected to settle the taxed costs despite demand. In the circumstances, the applicant deposed that it is only fair and just that judgment be entered as prayed for the sum of Kshs. 112,240/= being its taxed costs as against the respondent, together with interest thereon.
5. Needless to point out that the taxation procedure as provided for in the *Advocates Act*, Chapter 16 of the Laws of Kenya and the *Advocates (Remuneration) Order* is a special procedure intended for the expeditious resolution of disputes arising between advocates and their clients over the quantum of fees payable. Hence in *Donholm Rahisi Stores (firm) v EA Portland Cement Ltd [2005]* eKLR Hon. Waweru, J. held:

“Taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the taxing officer by the Advocates Remuneration Order. The court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the Advocates Remuneration Order.
6. The procedure is resorted to following disagreement and non-payment; and therefore it is only logical that upon taxation, an applicant be in a position to recover the costs as taxed. I therefore in complete agreement with the position taken in *Lubulellah & Associates Advocates v NK Brothers Limited [2014]* eKLR 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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.
7. The court record shows that the application is unopposed as no response was filed by the respondent. The documents Amarked as Annexures “NK-1”, “NK-2” and “NK-3” confirm that indeed the applicant’s costs have been taxed and a Certificate of Taxation issued in the sum of Kshs. 112,240/=. The applicant averred, and that averment is uncontroverted, that the Ruling on Taxation has not been appealed, reviewed or set aside; and that the respondent has failed, refused and/or neglected to settle the taxed costs despite demand.
8. In the premises, I find merit in the applicant’s Notice of Motion dated 18th April 2024. The same is hereby allowed and orders granted as hereunder:
 - (a) Judgment be and is hereby entered in favour of the applicant against the respondent for the sum of Kshs. 112,240/= only, being the certified costs due to the applicant as against the respondent.
 - (b) The costs of the application be paid to the applicant by the respondent together with interest on the taxed sum.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 25TH DAY OF JULY 2024.



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OLGA SEWE
JUDGE

