



Koceyo & Company Advocates v Nairobi City County (Miscellaneous Application 40 of 2014) [2024] KEHC 9671 (KLR) (Judicial Review) (2 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS APPLICATION 40 OF 2014**

**J NGAAH, J
AUGUST 2, 2024**

BETWEEN

KOCEYO & COMPANY ADVOCATES APPLICANT

AND

NAIROBI CITY COUNTY RESPONDENT

RULING

1. The application before court is the applicant’s motion dated 2 April 2024 expressed to be brought under Order 51 Rule 1, section 51(2) of the [Advocates Act](#), cap. 16 and section 3 of the [Civil Procedure Act](#), cap. 21.

Apart from the prayer for costs of the application, the only other prayer in the application is for judgment to be entered against the respondent. It is couched as follows:

“1. That judgment be and is hereby entered against the respondent for Kshs. 579, 227.00 with interest from the date of taxation.”

2. The application is supported by the affidavit of Mr. Titus Koceyo who has introduced himself as the managing partner of the applicant firm of advocates. According to the exhibits on the affidavit, the applicant’s advocate/client bill of costs was taxed at Kshs. 579,227/= . In the ruling of the taxing officer rendered on 18 November 2014, the bill was in respect of the applicant’s professional services rendered to the respondent in High Court Constitutional Petition No. 397 of 2013; National Citizens Forum Initiative & 3 Others versus Governor, County Government of Nairobi.
3. A certificate of taxation for the taxed amount was issued on 4 December 2014. According to Mr. Koceyo, this amount has not been paid to date and it is for this reason that he seeks judgment against the respondent.



4. The respondent did not file any response to the application despite having been served with the application. Neither was it represented in court when the application came up for hearing on 5 June 2024.
5. Under section 51(2) of the *Advocates Act*, the court is entitled to enter judgment in favour of the advocate for the amount certified as due and owing to the advocate upon taxation. This section reads as follows:
 - (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.
6. And of course, the applicant would not proceed with execution until he has obtained a decree which can only be extracted from a judgment. This was so held in *Santana Fernandes versus Kara Arjan & Sons & Others* (1962) EA473 where Mosdell, J stated at page 477 as follows:

“It is noted that Mr. Sayani’s application for execution has been made prior to the issue of a decree, and I understand that this, not infrequently, is the practice...For the guidance of practitioners in the future, I would state that the issue of a decree is a prerequisite to an application for execution thereof under o. 21rule 11 of the Civil Procedure Rules.”
7. For these reasons and in the absence of any objection to the applicant’s application, I allow the application to the extent that judgment is hereby entered for the applicant against the respondent for the sum of Kshs. Kshs. 579,227/=only.
8. I will not award interest or costs for the reason that no explanation has been given why it had to take the applicant 10 years to prosecute this application. The record shows that a similar application was filed in December 2014 but was withdrawn in March 2024 before the instant application was filed. Prior to the withdrawal, no action was taken on the previous application and it is not clear why it had to be withdrawn in the first place. Orders accordingly.

SIGNED, DATED AND POSTED ON CTS ON 2 AUGUST 2024

NGAAH JAIRUS

JUDGE

