



**Randolph M. Tindika t/a Tindika & Company Advocates v Hama Warehousing Limited
(Miscellaneous Civil Application 240 of 2021) [2023] KEHC 10 (KLR) (5 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 10 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 240 OF 2021
OA SEWE, J
JANUARY 5, 2023**

BETWEEN

**RANDOLPH M. TINDIKA T/A TINDIKA & COMPANY
ADVOCATES PLAINTIFF**

AND

HAMA WAREHOUSING LIMITED DEFENDANT

RULING

1. The notice of motion dated February 2, 2021 was filed herein by Mr Randolph M Tindika t/a Tindika and Company Advocates, pursuant to section 52 (1) of the [Advocates Act](#), Chapter 16 of the Laws of Kenya for orders that:
 - (a) The court be pleased to convert the certificate of costs dated May 22, 2012 into a decree and judgment with interest at 14% from May 22, 2012 until payment in full.
 - (b) Costs of the application be provided for.
2. The application was based on the grounds that the court has discretion to grant the orders sought; and that the certificate of taxation has not been impugned either via reference or otherwise, and yet the taxed amount remains unpaid by the respondent. These grounds were adverted to in the applicant's supporting affidavit, sworn on February 2, 2021 to which he annexed a copy of the certificate of costs dated May 22, 2012 for Kshs 115,034/= (marked Annexure "RMT 1").
3. The respondent resisted the application by way of a replying affidavit sworn on August 30, 2021 by one of its directors, Harish Patel. Mr Patel averred that the application is misconceived and has been brought in bad faith as the respondent was not served with the advocate/client bill of costs or the ruling on taxation and was therefore not aware that taxation had taken place and a certificate of taxation issued against it. It was therefore the averment of Mr Patel that to convert the same into a judgment and decree



of the court would be tantamount to condemning the respondent unheard, which is against natural justice.

4. It was further deposed by the respondent that, having slept on his rights for 10 years now, the applicant is not entitled to claim interest on costs that were awarded 10 years ago. He otherwise prayed for the dismissal of the application with costs.
5. The application was heard ex parte on June 30, 2022 after the court was satisfied that hearing notice was duly served on the respondent. I have therefore gone through the record and confirmed that taxation was undertaken and a ruling on taxation delivered on May 22, 2012. If indeed notice of the taxation was not served on the respondent as postulated in the replying affidavit, the respondent would have sought the setting aside of the said ruling. I note too that to date, no such application has been brought; an indication that the averments in that regard in the respondent's replying affidavit are nothing but an afterthought.
6. I am therefore satisfied that, on the basis of the averments set out in the supporting affidavit and in particular the certificate of taxation annexed thereto, that a justification has been made to warrant the issuance of the orders sought. As, there was no explanation for the delay between May 22, 2012 and February 3, 2021 when the instant application was filed, I find no basis for awarding interest on the taxed costs from the date of taxation. Instead, interest is hereby awarded from February 3, 2021.
7. In the premises, it is hereby ordered that:
 - (a) That judgment be and is hereby entered in favour of the applicant on the basis of the certificate of costs dated May 22, 2012 in the sum of Kenya Shillings One Hundred and Fifteen Thousand and Thirty-Four only (Kshs 115,034/=). together with interest thereon at 14% from February 3, 2021 until full payment.
 - (b) Costs of the application shall be borne by the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL AT MOMBASA THIS 5TH DAY OF JANUARY 2023.

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OLGA SEWE

JUDGE

