



Gazemba Wekesa Co Advocates v Trident Insurance Company Limited (Miscellaneous Civil Application E088 of 2021) [2023] KEHC 687 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEHC 687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION E088 OF 2021**

MW MUIGAI, J

FEBRUARY 9, 2023

**IN THE MATTER OF THE ADVOCATES ACT
(CAP 16 OF THE LAWS OF KENYA) & THE ADVOCATES
REMUNERATION ORDER, 2014)**

AND

**IN THE MATTER OF TAXATION OF ADVOCATES –CLIENT
BILL OF COSTS**

BETWEEN

GAZEMBA WEKESA CO ADVOCATES APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

RULING

Notice of Motion

1. This ruling relates to the notice of motion application dated July 4, 2022, brought under the provisions of section 51 (2) of the [Advocates Act](#), cap 16 and rule 7 of the [Advocates \(Remuneration\) Order, 1962](#).
2. The applicant seeks the following orders: -
 - a. That the court be pleased to enter judgment against the respondent on the amount of Kshs 79, 600/- certified on the certificate of taxation herein dated June 28, 2022, together with interests at the rate of 14% per annum from July 2, 2021 until payment in full.
 - b. That a decree issue in respect of the sum of Kshs 79, 600/- certified on the certificate of taxation dated June 2, 2022, together with interest at the rate of 14% per annum from July 2, 2021,



until payment in full, and that the applicant be at liberty execute for recovery of the same in such manner as a decree of this court.

- c. Costs of this application be provided for.
3. The application is supported by the supporting affidavit of Janet Nasimiyu Wekesa, Advocate. She deposed that she served the respondent with the bill of costs dated May 25, 2021 and, therefore, had a notice of the outstanding fees payable and interest on costs at the rate of 14% per annum in compliance with paragraph 7 of the [Advocates \(Remuneration\) Order](#). She further averred that the copies of the bill of costs dated May 25, 2021 and taxation notice of the same date were annexed as evidence of service.

Replying Affidavit

4. The application is opposed by the respondent through the replying affidavit of its Legal Officer Brigit Aringo sworn on October 24, 2022. The respondent averred that the application was frivolous, vexatious, an abuse of the court process and a waste of the court's judicial time. The respondent contended that it was never served with the applicant's bill of costs dated January 28, 2022 and thus it was denied an opportunity to respond to the assessment of costs as tabulated.
5. The respondent opined that she disputes items 4,5,6 and 10 of the bill of costs on the basis that the Taxing Master gave awards for amounts pertaining to the items therein without proof of receipts from process servers and the amount in item 5 and 6 are excessive. That there was no basis or documentation to support items 7,10,13,14,15 and 16 as outlined under order 21 rule 9A [CPR 2010](#). The respondent urges the court to set aside the bill of costs and issue an order that the same should be subjected to a fresh taxation.

Supplementary Affidavit

6. The applicant filed a supplementary affidavit sworn November 14, 2022. Written submissions dated November 22, 2022 were also filed. The respondent did not file any submissions. None has been placed in the court file.

Supplementary Affidavit

7. The applicant filed a supplementary affidavit on November 14, 2022 sworn by Janet Nasimiyu Wekesa Advocate. Counsel reiterated the contents of the supporting affidavit and further contended that the respondent is trying to mislead the court that it was not served when there is clear receipt of service by stamping on the applicant's copies, that the respondent was given an opportunity to be heard but chose to sleep on that right.
8. Counsel contended that the ruling on the advocate-client bill of costs dated May 25, 2021 was delivered on August 27, 2021, the certificate of costs has not been challenged since delivery of the ruling and the items challenged by the respondent were taken into consideration in the said ruling. It was contended that this was not the proper forum for the respondent to challenge the certificate of costs.
9. The application was canvassed by way of written submissions. Only the applicant's submissions were on record at the time of writing this ruling.

Applicants Written Submissions

10. The applicant filed submissions dated November 22, 2022. As to whether the certificate of costs can be challenged at this stage, it was submitted while making reference to section 51(2) of the [Advocates Act](#) that if the certificate of costs of the taxing officer has not been set aside or altered by the court, then



the court has no other option but to enter judgement for the sum certified to be due with costs. It was submitted that the respondent has not complied with provisions of paragraph 11 of the *Advocates (Remuneration) Order, 1962* having not filed any objection with the taxing officer as it is required.

11. As to whether interest can be applied on the certified amount in the certificate of costs, reference was made to the case of *Mwangi Chege & Company Advocates vs Kenya Broadcasting Corporation* (2021) and paragraph 7 of the *Advocates (Remuneration) Order 1962* that provides that;

"An advocate may charge interest at 14 per cent per annum on his disbursements and costs whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full."

12. The court was urged to grant the interest at 14% from the expiry of one month after delivery of the bill which is on July 2, 2022 until when payment was/is effected in full.
13. On costs, it was submitted that they should be entered in favor of the applicant as the holder of the certificate of costs as the successful litigant and therefore whenever it is proved that the retainer is not disputed and the certificate of costs has not been challenged then the judgement should be entered with costs.

Determination

14. This court has considered the application, its supporting affidavit and the annexures thereto, the replying affidavit of the respondent and the supplementary affidavit of the application and submissions and only the applicants submissions are on record at the time of writing this ruling.
15. It is evident that the respondent was served with the bill of costs and taxation notices on 31st of May 2021 which it failed to defend.
16. As to whether the conditions of section 51(2) of the *Advocates Act* which provides;

"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."
17. From the court record on October 17, 2022 the applicant sought judgment on certificate of costs of January 28, 2022 and respondent through counsel indicated they counsel had just been instructed and wished to be placed on record and sought 14 days to file response to the application. The court granted the respondent's application.
18. On November 15, 2022, the respondent was absent and not represented the replying affidavit was filed and served and the applicant sought 7 days to file a supplementary affidavit and file written submissions. The court granted the application and the respondent was to be served with the court order.
19. On December 6, 2022, the respondent and/or counsel were absent the applicant filed supplementary affidavit and written submissions. The applicant filed affidavit of service on December 1, 2022 confirming service through email of respondent's counsel of the court order on November 5, 2022 vide letter of November 24, 2022 and written submissions.
20. This court was satisfied of adequate and legal service and hence and granted ruling date with a rider incase written submissions were availed it shall be through the Deputy Registrar.



21. The applicant has complied with the process of hearing and determination of the application for entry on judgment for certificate of taxation. Certificate of taxation which has not been appealed against nor set aside or varied and has not been challenged by filing of reference by the respondent.
22. Section 51(2) of the Advocates Act grants the court jurisdiction to enter judgment where the bill of costs has been taxed and the taxing master has issued a certificate of costs.
23. The respondent through its replying affidavit sworn on October 26, 2022 urges the court to set aside the certificate of taxation and taken issue with items 4,5,6 and 10 of the bill of costs. Yet the Taxing Officer's ruling of August 27, 2021 indicates item 4 is not supported by documents and therefore was not granted but taxed off. Similarly, items with regard to drawings, receiving, perusals, making copies, attendances to the registry were also taxed off. All items dealing with service were each taxed at Ksh 1,400 which this court finds reasonable in the circumstances and increase of instruction fees was declined. I find the taxation was fairly conducted within the confines of the Advocates Remuneration Order. In the absence of a reference filed to challenge the taxation I decline to dismiss the instant application on account that that is not the proper procedure.
24. Reference is made to the case KTK Advocates vs Baringo County Government (2018) eKLR where it was held that when "the two conditions are satisfied the court has the discretion to enter judgment for the sum certified due with costs."
25. In the view of foregoing, I am satisfied that from the material placed before me that all the conditions as set out in section 51(2) of the Advocates Act have been satisfied and that this is a suitable case for it to exercise its discretion in favor of the applicant and therefore enter judgment against the respondent for the certified sum.

Disposition

26. I find that the application is merited and order as follows:
 1. That the judgment is hereby entered against the respondent on the amount of Kshs 79, 600/- certified on the certificate of taxation herein dated June 28, 2022, together with interests at the rate of 14% per annum from July 2, 2021 until payment in full.
 2. That decree is hereby issued for the sum of Kshs 79, 600/- certified on the certificate of taxation dated June 2, 2022, together with interest at the rate of 14% per annum from July 2, 2021, until payment in full, and that the applicant be at liberty execute for recovery of the same in such manner as a decree of this court
 3. The applicant is granted the costs of the application.

**DELIVERED, SIGNED & DATED IN OPEN COURT IN MACHAKOS ON 9TH FEBRUARY, 2023
(PHYSICAL/VIRTUAL CONFERENCE).**

M. W. MUIGAI

JUDGE

In The Presence Of:

Mr. Mutava for L. Mbugua for the Applicant

No appearance for the Respondent

Patrick/Geoffrey – Court Assistant(s)

