



**Githui v Ngui ((Suing as the legal administrator of Henry Ngui Musyoka (Deceased))  
(Miscellaneous Civil Application 59 of 2019) [2023] KEHC 1844 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1844 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS CIVIL APPLICATION 59 OF 2019  
LM NJUGUNA, J  
MARCH 1, 2023**

**BETWEEN**

**EPHRAIM KARUOYA GITHUI ..... APPLICANT**

**AND**

**JENNIFER KANYIVA NGUI (SUING AS THE LEGAL ADMINISTRATOR OF  
HENRY NGUI MUSYOKA (DECEASED)) ..... RESPONDENT**

**(SUING AS THE LEGAL ADMINISTRATOR OF HENRY NGUI MUSYOKA  
(DECEASED))**

**RULING**

1. The application before me is the Notice of Motion dated September 15, 2022.
  - i. That this honourable court be pleased to enter judgment in favour of the respondent for taxed costs of Kenya Shillings One Hundred and Seventy Five Thousand, Eight hundred and Eighty Two ( Kes. 175, 882.00).
  - ii. That the applicant be condemned to pay costs of this application.
2. The application is premised on the grounds on the body of the motion and the supporting affidavit sworn by the applicant's counsel on September 15, 2022. In brief, the respondent contends that a Notice of Taxation dated May 18, 2022 was served upon the applicant on the even date and the Bill of Costs dated April 19, 2022 was taxed by the Deputy Registrar on September 7, 2022 to the tune of Kes. 175,882.00. That upon taxation of the Bill of Costs, the respondent duly communicated to and served upon the applicant vide a letter dated on September 8, 2022 and subsequently a Certificate of Taxation dated September 12, 2022 was issued. It was contended that it is only just and mete that this honourable court do enter judgment for taxed costs as the Certificate of Costs has never been set aside and/or stayed. It was prayed that the application be allowed.



3. The applicant in opposing the application filed a response to the respondent's party and party Bill of Costs dated April 19, 2022 wherein he states that he is opposed to inter alia items 1, 12, 13 and 14 of the Bill of Costs for the reason that the same were not drawn to scale. That he is in agreement with inter alia items 2 and 8; further that items 4, 11, 12, 13, 14 were not drawn to scale. In the same breadth, items 5 and 6 were opposed as the applicants never filed a response to the memorandum of appeal; items 9, 10 and 11 were opposed as the receipts were never provided given that the same ought to have been attached to the Bill of Costs. It was contended that items 19, 10 and 11 on disbursements are opposed as there are no receipts produced in support of the same.
4. The application was disposed of by way of written submissions. The applicant chose to rely on his response while the respondent submitted that as at the date of filing of the application herein, the certificate of costs dated September 12, 2022 had not been altered and/or set aside and no reference had been filed by the applicant. Reliance was placed on the case of *Lubullelah & Associates Advocates v NK Brothers Limited* [2014] eKLR. It was submitted that the applicant filed a response to the party and party Bill of Costs dated April 19, 2022 instead of filing a proper response to the application herein. That the response ought to have been filed before the Deputy Registrar taxed the bill of costs. It was contended that the procedure of challenging a decision of a Taxing Officer is clearly provided for under section 51 of *Advocates Act* and Rule 11 of the *Advocates Remuneration Order* which provides that a person who objects to a decision of the Taxing Officer may within 14 days from the receipt of the reasons of the Taxing Officer apply to the Judge in chambers setting out the grounds of his objections. It was submitted that the applicant's response is a nonstarter for the reason that it has been overtaken by events. Reliance was placed on the case of *Nadeem A. Kana v Lucy Wambui Mwangi* [2021] eKLR. In the end, this court was urged to allow the prayers as sought.
5. I have carefully perused the court record and considered the rival positions herein. It is evident that the applicant filed and served the Bill of Costs dated 19/4/2022 upon the respondent which it failed to settle and or defend. Further, there is also a Certificate of Taxation dated September 12, 2022 for a sum of Kes. 175,882.00 which has not been challenged by the respondent.
6. Section 51(2) of the Advocates 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 costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in the case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
7. In *Lubullelah & Associates Advocates v NK 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. 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 November 25, 2012.”
8. As provided for under Paragraph 7 of the *Advocates Remuneration Order*, I find that interest rates of 14 % per annum is payable from October 8, 2022 being 30 days from the date the Bill of Costs was served upon and received by the respondent.



9. [Also see *Okong'o Wandago & Company Advocates v County Government of Migori* [2021] eKLR; *Odera Obar & Co. Advocates v Aquva Agencies Limited* [2021] eKLR].

10. In the premises, I find that the application has merit and make the following orders:-

- i. Judgment is entered for the respondent against the applicant, for Kshs.175, 882.00 as per the certificate of taxation dated the September 12, 2022.
- ii. Interest on the sum of Kshs. 175,882.00. do accrue at the rate of 14% per annum, with effect from October 8, 2022, until payment shall be made in full.
- iii. The applicant is awarded the costs of the application.

11. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 1<sup>ST</sup> DAY OF MARCH, 2023.**

**L. NJUGUNA**

**JUDGE**

.....Applicant

.....Respondents

