



**Magare Musundi & Company Advocates v Pubs Entertainment and Restaurants
Association of Kenya (PERAK) (Miscellaneous Application E095 of 2022)
[2023] KEHC 18615 (KLR) (Judicial Review) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18615 (KLR)

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

MISCELLANEOUS APPLICATION E095 OF 2022

JM CHIGITI, J

JUNE 19, 2023

BETWEEN

MAGARE MUSUNDI & COMPANY ADVOCATES APPLICANT

AND

**PUBS ENTERTAINMENT AND RESTAURANTS ASSOCIATION OF KENYA
(PERAK) RESPONDENT**

RULING

Brief Background

1. The Applicant herein filed an application by way of a Notice of Motion dated April 19, 2023, seeking Orders That:
 1. Judgment be entered in favour of the Applicants against the client for the sum of Kenya Shillings Five Million Nine Hundred and Ten Thousand and Thirty One and Eighty cents (Kshs 5,910,031.80/=) being the certified costs due to the Applicant as against the client.
 2. The client do pay to the Applicants the costs of this taxation, the Application together with interests on the taxed sum be assessed by the Honourable Court.
2. The Application is founded on the grounds set out on the face therein and by a supporting affidavit sworn on April 19, 2023 by Ben Musundi.
3. The Advocate-Client costs due to the Applicants herein were taxed at Kenya Shillings Five Million Nine Hundred and Ten Thousand and Thirty one and Eighty Cents (Kshs 5,910,031.80/=) and a Certificate of Taxation issued to that effect on April 14, 2023. Annexed Copy of the Certificate of Taxation marked as BM1.



4. It is The Applicant's case that the Respondent has refused and or neglected to pay the Advocates/ Applicants their costs as taxed by the Honourable Taxing Officer on April 13, 2023.
5. The Applicant argues that it will not be able to execute the decree unless the Certificate of Taxation dated April 14, 2023 is converted into a Decree and Judgement.

Determination

6. It is not disputed in the present application that judgment for costs was entered in favour of the *ex parte* Applicant in Nairobi Judicial Review Application Number 335 of 2013.
7. The Respondent has not filed any responses and as such the Application remains unopposed.
8. From the Affidavit of Service dated May 10, 2023, I am satisfied that a hearing notice and an Application dated April 19, 2023 was duly served upon the Respondent.
9. The Respondent has not given any satisfactory reason as to why the payment of costs have not been fulfilled and no efforts have been made towards settling the same.
10. The applicable law is found at Section 51(2) of the *Advocates Act* which reads as follows;

“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.”

11. The Court takes into consideration that the Certificate of Taxation dated April 14, 2023 has not been set aside or impugned by this court.
12. In *Lubulellah & Associates Advocates versus N K 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.”

13. In the premises, I find that the *ex parte* Applicant's Notice of Motion dated April 19, 2023 is merited.
14. The Court therefore proceeds to enter judgment against the Respondent for the certified sum.

Orders

The Notice of Motion dated April 19, 2023 is allowed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE 2023

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J. CHIGITI (SC)
JUDGE

