



REPUBLIC OF KENYA



Swiss Deli Trade (Panama) Inc v Privamnuts Epz Kenya Ltd (Civil Suit 8 of 2020) [2023] KEHC 19878 (KLR) (12 July 2023) (Ruling)

Neutral citation: [2023] KEHC 19878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL SUIT 8 OF 2020
LM NJUGUNA, J
JULY 12, 2023**

BETWEEN

SWISS DELI TRADE (PANAMA) INC PLAINTIFF

AND

PRIVAMNUTS EPZ KENYA LTD DEFENDANT

RULING

1. The application before the court is dated December 21, 2022 wherein the applicant seeks for orders that:
 - i. This Honourable Court be pleased to enter judgment in favour of the applicant for taxed costs of Kenya Shillings Two Million One Hundred and Sixty Two Thousand, Four Hundred and Thirty Three (KES 2,162, 433/-).
 - ii. The plaintiff be condemned to pay costs of this application.
2. The application is premised on the grounds on its face and it's supported by the affidavit of the applicant.
3. The applicant's case is hinged on the fact that a Notice of Taxation dated July 20, 2022 was served upon the plaintiff on August 1, 2022 and the Bill of Costs dated July 4, 2022 was taxed by the Tax Master on November 23, 2022 to the tune of KES 2,162,423/=. That upon taxation of the Bill of Costs, the defendant duly communicated to and served upon the plaintiff vide a letter dated November 24, 2022 and subsequently a Certificate of Taxation dated December 16, 2022 was issued to that effect. It was averred that the defendant notified the plaintiff but he has failed and/or neglected to pay the costs as taxed by the Tax Master. That it is only just and mete that this Honourable Court do compel the plaintiff to pay the applicant the taxed costs by entering judgment as the Certificate of Cost has not been set aside and/or stayed.



4. The plaintiff/respondent filed grounds of opposition to the defendant's application on the grounds that the application is incompetent as it was filed with full knowledge that the plaintiff intends to prefer a reference against the Tax Master's ruling and issuance of the Certificate of Costs. The Tax Master was faulted for not having exercised his discretion judiciously which is tantamount to gross abuse of the court process.
5. Further, one Mr. Werner Albert Bossard filed a replying affidavit sworn on 13.03.2023 and wherein he deposed that he is aggrieved by the taxation and intends to file a reference against the same. That he wrote to the Tax Master on December 5, 2022 objecting to the taxation and seeking reasons for the Tax Master's decision under Rule 11 of the *ARO*. It was his contention that the Tax Master erred in law and fact by failing to exercise his discretion in arriving at the taxed costs. That the defendant will not be prejudiced if the plaintiff were to be allowed to pursue its intended reference and that being the case, the application herein should be dismissed.
6. The court gave directions that the application be canvassed by way of written submissions and only the defendant complied with the direction.
7. The applicant submitted that it filed an application dated December 21, 2022 to have the court enter judgment for the taxed costs of KES 2,162,433/= in its favour. Reliance was placed on section 51(2) of the *Advocates Act*. The applicant reiterated that at the time of filing the application herein, the certificate of costs had not been altered and/or set aside and no reference had been filed by the plaintiff. That the defendant also communicated to the plaintiff of the outcome of the ruling of November 28, 2022 vide a letter dated November 24, 2022 and subsequently a certificate of taxation was issued and since then, no reference has been preferred by the plaintiff/respondent. Further reliance was placed on the case of *Lubulella & Associates Advocates vs N.K. Brothers Limited* [2014] eKLR. It was therefore prayed that the application herein be allowed.
8. I have considered the application herein and the written submissions by the defendant/applicant and I find that the sole issue for determination in this application is whether the orders sought herein should issue.
9. The Applicant filed an Affidavit of Service sworn on March 7, 2023 by Mary Olimta Gatavi proving that the Respondent was served with the hearing Notice of the Application herein. The Respondent, although served, did not attend or send a representative for the hearing of the motion. The Application is therefore not opposed.
10. The applicable law is found in 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 above mentioned provision was reiterated in the case of *Musyoka & Wambua Advocates Vs Rustam Hira Advocate* (2006) eKLR where it was held: -

“Section 51 of the *Act* makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer.



This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....

12. The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:
 - a. The costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
 - b. The Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
 - c. There is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.
13. The Court takes into account that the Certificate of Taxation dated December 16, 2022 has not been set aside or impugned in any way.
14. This position was reiterated in *Lubullellah & Associates Advocates versus NK Brothers Limited* [2014] eKLR where 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 16.12.2022.”
15. On the issue of interests on the taxed costs, Rule 7 of the *Advocates (Remuneration) Order* which stipulates that:

“An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiry to one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount has been paid or tendered in full.”
16. In the case of *D. Njogu & Company Advocates Vs Kenya National Capital Corporation* [2006] eKLR, the court held that interest ought to run from the date the correct fee note was sent to the client irrespective of whether the bill of costs was subsequently reduced on taxation. The court therein explained that the “correct fee note” meant a bill that was in accordance with the terms upon which the advocate had contracted with the client, or the bill which the client did not dispute, or the bill which was in accordance with the sums awarded by either the taxing officer or by the deputy registrar in a certificate of costs.
17. This court took respectful view that Rule 7 of the Advocates Remuneration Rules is clear that interest is chargeable at fourteen (14%) per cent per annum, from the expiration of one month from the delivery of the bill to the client. There was therefore a reference point, from when interest would be calculable. It could not accrue before one month had expired, from the time when the bill was delivered to the client.
18. In the case herein, the defendant was made aware of the Bill of Costs on August 1, 2022. Bearing in mind the holding of *D. Njogu & Company Advocates vs Kenya National Capital Corporation* (*supra*)



which this court fully associates itself with, this court comes to the firm conclusion that the one (1) month envisaged in Rule 7 of the Advocates Remuneration Order lapsed on September 1, 2022. Interest would thus accrue on the certified costs from September 1, 2022.

19. In the light of the foregoing, this court makes the following orders;
- i. The application is hereby allowed.
 - ii. Judgment is hereby entered for the applicant against the respondent for KES 2,162,433/= as taxed costs.
 - iii. Interest at the rate of 14% from September 1, 2022 until payment in full.
 - iv. Costs to the applicant.
20. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 12TH DAY OF JULY, 2023.

L. NJUGUNA

JUDGE

.....Applicant

.....Respondent

