



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC NO. 101 OF 2019

NYACHOTI & COMPANY ADVOCATES.....ADVOCATE

VERSUS

SAYANI INVESTMENT LIMITED.....CLIENT

RULING

1. Coming up for determination is a Notice of Motion application dated 17th February 2021 in which the applicant seeks entry of judgement of the taxed costs as follows:

i. That judgement in the sum of Kshs. 2,479,432.83 be and is hereby entered in favour of the applicant against the respondent as per the certificate of taxation issued herein on 11th November 2019, with interest thereon at court rate until payment in full.

ii. That the costs of this application be awarded to the applicant.

2. Vide the supporting affidavit dated 17th February 2021 by Philip Nyachoti of Nyachoti & Company Advocates, it is averred that the Certificate of Taxation emanated from a ruling delivered on 6th November 2019 by Hon. I. N. Barasa. The said ruling was upheld by Justice B. M. Eboso vide his ruling dated 10th February 2021 in which he dismissed the reference dated 18th November 2019 filed by the respondent which sought to review, revise/ vary the decision of the Taxing Master. Thus the Certificate of Taxation was still in effect.

3. In the replying affidavit sworn by Karim Jetha, Managing Director of the respondent dated 21st October 2021 he averred that being dissatisfied by the decision of Hon. Justice B. M. Eboso dated 10th February 2021, they appealed to the Court of Appeal in Civil Appeal No. E178 of 2021 seeking the setting aside of the ruling and consequential orders. They therefore stated that in the interest of justice, the issuance of the decree should be deferred until the appeal is heard and determined.

4. This court has considered all the material presented before it. The issue for determination is ***whether the court should enter judgement based on the certificate of taxation dated 11.11.2019.***

5. The ruling delivered by Justice B. M. Eboso dated 10th February 2021 upheld the ruling by Hon. I. N. Barasa dated 6th November 2019 in the following words, "... *In the end, I find no merit in the client's reference brought through the Chamber Summons dated 18/11/2019. The same is dismissed with costs to the advocate.*" The applicant states that this ruling is still in effect since it had not been set aside. However, the respondent contends that the application should not be allowed because they have appealed the said decision to the Court of Appeal vide Civil Appeal No. E178 of 2021 and should the prayers be granted, then the appeal will be rendered nugatory.

6. Section 51 (2) of the Advocates Act Cap 16 provides:

"(2) 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."

7. A plain reading of the above provision means that as a rule of practice, advocates can move court to enter judgement on the taxed bill of costs if the same has not been set aside by court. This court has looked at all the documents on record including the ruling dated 10th February 2021 which upheld Hon. I. N. Barasa's ruling delivered on 6th November 2019 and finds that the certificate of taxation dated 11th November 2019 is still in force.

8. It has been said time and again that an appeal does not operate

as a stay of execution, see **Order 42 Rule 6** of the **Civil Procedure Rules, 2010**. This court takes cognisance that an application for stay of execution pending appeal has not been filed before this court. As such, this court cannot embark on the process of ascertaining whether a stay of execution meets the threshold set out in the above mentioned provisions of law.

9. From the foregoing analysis, I find that the application dated 17.2.2021 is merited and judgment is entered as prayed. The respondent is to bear the costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

..... for the Advocate

..... for the Client

Court Assistant: Edel Barasa