



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISC. APPLICATION NO. 313 OF 2017

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

KENYA MEDICAL SUPPLIES AUTHORITY.....1ST RESPONDENT

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD....2ND RESPONDENT

AND

MEDOX PHARMACEUTICALS LIMITED.....INTERESTED PARTY

EX PARTE: NAIROBI ENTERPRISES LIMITED

RULING

1. This ruling is on the Interested Party's application by way of a Notice of Motion dated 16th December 2019, in which he is seeking judgement for the amount of Kenya Shillings Two Million Four Hundred and Sixty-Eight Thousand, Seven Hundred and Fifty-Seven and Twenty Cents (Kshs 2,468,757.21/=) in terms of the certificate of taxation dated 2nd December 2019. The application is supported by an affidavit sworn on 16th December 2019 by Julius Migos Ogamba, the advocate having the conduct of this matter on behalf of the Interested Party.
2. The grounds for the application are that the Interested Party's Party and Party Bill of Costs dated 4th April 2018 was taxed on 14th November 2019 and is the basis for the certificate of taxation dated 2nd December 2019. However, that the applicant has failed and neglected to pay the fees in the said certificate, and it is in the interests of justice that the Court enters judgment for the Interested Party.
3. This Court directed that the said application be served upon the *ex parte* Applicant and Respondents, who did not file any response thereto.
4. The Interested Party's advocates on record, Migos Ogamba & Waudo Advocates, urged the application through written submissions dated 5th February 2021, wherein it was submitted that the application is pegged on Section 51 (2) of the Advocates Act. The Interested Party seeks judgment to be entered for the sum certified and due as per the Taxing Officer Certificate, and submitted that the Certificate of Costs issued by the Taxing Officer was final unless set aside or altered by Court. Reference was made to section 2 of the Advocates Act that defines Court to mean the High Court and Section 51 (2) which is to the effect that only Court can alter the amount in the certificate. Therefore, that the High Court had the jurisdiction to set aside or alter the Certificate or enter judgment for the amount ascertained by the Taxing Officer as per the Certificate of Costs.
5. The Interested Party invited the Court to find that the Certificate of Costs issued on 2nd December 2019 had not been challenged neither no objections raised, despite the parties being served with the Notice of Taxation. Therefore Court has no option but to allow the instant application. The Interested Party added that the fact that a taxation certificate was issued was conclusive as to the amount ascertained by the taxing officer as a final award. They urge that the Court should take into account the principle of Article 159 (2) (b) & (d) of the Constitution of Kenya and Section 1A and 1B of the Civil Procedure Rules, that the Courts overriding objective should be to facilitate a just, expeditious, proportionate and affordable resolution of disputes.

6. The Interested Party relied on the decisions in Nyabena t/a Nyabena Nyakundi & Co. Advocates vs Tourism Promotion Ltd & Other [2018] eKLR; and Otieno Yogo & Co Advocates vs Kisumu Water & Sewerage Company Advocates [2018] eKLR for the propositions made in its submissions.

The Determination

7. The issue for determination in the instant application is whether judgment should be entered against the Interested Party for the taxed costs due to it. Under section 51(2) of the Advocates Act, this Court has power to enter judgment in an Advocates' favour on taxed costs 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”.

8. It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer. This position has been upheld in various cases including Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited (supra), Dally and Figgis Advocates vs Homelex Limited (2013) eKLR and Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Ltd (2012) eKLR. In addition, Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 % until payment in full.

9. In the present application, it is not in dispute that the Interested Party's Party and Party Bill of Costs dated 4th April 2018 was taxed on 14th November 2019 and there is a Certificate of Taxation dated 2nd December 2019 on record certifying the said taxation. Neither the ex parte Applicant nor the Respondent have in this regard brought any evidence of any pending dispute as regards the amount of taxed costs. As the taxed costs and Certificate of Costs issued to the Interested Party dated 2nd December 2019 has not been challenged, it is therefore deemed to be final, and the Interested Party is thus entitled to judgment.

10. In the premises I find merit in the Interested Party's Notice of Motion dated 16th December 2019, and grant the following orders:

I. Judgment is entered for the Interested Party against the ex parte Applicant for taxed costs of Kenya Shillings Two Million Four Hundred and Sixty-Eight Thousand, Seven Hundred and Fifty-Seven and Twenty Cents (Kshs 2,468,757.21/=) as certified in the Certificate of Taxation dated 2nd December 2019, with interest at 14% per annum from the date of taxation until payment in full.

II. The Interested Party shall have costs of the Notice of Motion dated 16th December 2019 of Kshs 20,000/=.

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF OCTOBER 2021

P. NYAMWEYA

JUDGE

DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER 2021

J. NGAAH

JUDGE