



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

HCC REFERENCE NO. E004 OF 2021

IN THE MATTER OF: THE ADVOCATES CLIENT BILL OF COSTS

=BETWEEN=

STEPHEN K. KIBUNJA T/A KIBUNJA & ASSOCIATES ADVOCATES...APPLICANT/ADVOCATE

=VERSUS=

NZOIA SUGAR COMPANY LIMITED.....RESPONDENT/CLIENT

CORAM: Hon. Justice S.K Githinji

Kibunja & Associates advocates for the Applicant

Bryan Khaemba, Kamau advocates for the Respondent

R U L I N G

The applicant herein filed a Notice of Motion dated 3rd September 2021 for orders that;

1. Spent.

2. THAT the certificate of taxation dated 1st July 2021 for an amount of Kshs. 2,552,000 be entered as the final judgment for costs in suit.

3. THAT interest of 14 % to accrue from the date of issue of certificate of Taxation till payment in full.

4. THAT the costs of the application be provided for.

The application is supported by the annexed affidavit of Mr. Stephen Kinyanjui Kibunja who states that he filed an advocate-client bill of costs dated 1st September 2020 arising from HCC Misc. No. 56 of 2020 at the High Court in Malindi for taxation. That the same was taxed by the Taxing officer at Kshs. 812,000 and a Certificate of costs issued. Dissatisfied with the award he filed a Reference in the High court at Malindi HCC Ref No. E004 of 2021 and vide a ruling dated 30th June 2021 he was awarded Kshs. 2,552,000 and a Certificate of Costs thereof was issued.

He further states that the Respondent dissatisfied with the ruling and the certified costs indicated that they would file an appeal in the Court of appeal and by an application dated 5th July 2021 sought stay of execution.

On 15th July 2021, Hon. Nyakundi J granted a Conditional stay that the Respondent deposit the taxed costs of Kshs. 2,552,000 within 40 days. The respondent did not comply with the court orders of 15th July 2021 thus the instant application.

At the time of writing this ruling, I have not seen the replying affidavit of the respondent referred to during the hearing of the application.

Submissions, Analysis and Determination

Mr. Kibunja informed the court that the respondents had filed a replying affidavit dated 30th September 2021. Further the respondent had previously written to the Deputy Registrar on 10th August 2021 stating that the amount awarded by Hon. Nyakundi J should include the amount paid which should be deducted from the certificate. On 31st August 2021, the DR said that she had no jurisdiction to make any amendments to the certificate of costs. That Mr. Khaemba had made an out of court settlement to pay Kshs. 2,552,000 by three equal monthly instalments which he had accepted. He urged the court to enter judgment for the sum of Kshs. 2,552,000.

Mr. Khaemba submitted that the bill of costs was taxed by the DR at Kshs. 812,000 and the same had been paid. That the applicant had filed a reference at the high court and the same was taxed at Kshs. 2,552,000. Following the ruling, the respondent filed a letter dated 23rd August 2021 seeking clarity from the Deputy registrar regarding the payment of Kshs. 812,000 to which the DR advised that the issue of Kshs. 812,000 ought to be raised with the judge. He stated that clarity was needed before judgment was entered and that he was of the opinion that this court might not be able to make that clarification.

I have perused the pleadings on record, the ruling by my brother Hon. Nyakundi J and heard the submissions of the parties. As such, I find the following issues for determination;

- 1. Whether the amount of Kshs. 2,552,000 should be entered as final judgment.**
- 2. Whether the interest of 14% should accrue from the date of certificate of taxation till payment in full.**
- 3. Who should bear the costs of the application?**

On the second paragraph at page 9 of the ruling dated 30th June 2021, my brother Hon. Nyakundi J states that; “... ***I am of the view that the taxation of item 15 that is the instruction fees ought to be interfered with.***” It is my view that the said clause is clear that the only thing that was interfered with from the taxation by the DR was the instruction fee of which was enhanced to Kshs. 2,552,000. All other items remain as previously taxed by the taxing officer. So to say, the sum of Kshs. 812,000 was not part of the 2,552,000 taxed by the high court.

Also to note is that, if the respondent had challenges in interpreting the ruling or felt that the same was ambiguous, they should have exhausted the proper channels to have the same clarified. A letter to the DR, was not the proper way to address the issue as it was not a creation of the taxing officer. A proper application should have been made to the court that had issued the orders.

The Respondent’s intended to appeal against the ruling and sought for orders of stay which were granted conditionally, upon depositing the taxed amount as security within 40 days from the date of the orders. The respondent did not deposit the same and no appeal was preferred. This in my view amounts to a delaying tactic by the respondent in making good the Applicant’s claim. Notwithstanding that interest was due. This therefore, follows that interest at the rate of 14 % should accrue from the date of certificate of taxation till payment in full. Application is granted as prayed.

There are no further orders as to costs of this application.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 9th DAY OF NOVEMBER, 2021

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S.M GITHINJI

JUDGE

In the Presence of: -

1. Mr Kibunja for the Applicant
2. Mr Wafula holding brief for Mr Khaemba for the Respondent