



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE NO. 248 OF 2018

D.N. IKUA & MWANGI F.N. T/A IKUA, MWANGI &

COMPANY ADVOCATES.....APPLICANT

VERSUS

GIDEON MOIRESPONDENT

RULING

1. Proceedings in this matter commenced on 20th September 2016 when the applicant filed Advocate/Client bill of costs dated 19th September 2016. The matter was originally filed as High Court Miscellaneous Application Number 332 of 2016 (Nakuru). The bill of costs was taxed at KShs 1,557,646 on 22nd August 2017 and a Certificate of Taxation dated 19th January 2018 was issued to that effect.
2. With a view to recovering the taxed costs, the applicant filed Notice of Motion dated 25th January 2018 in which orders are sought that the Certificate of Taxation dated 19th January 2018 be adopted as a decree of this court and that subject to the aforesaid prayer being granted, leave be granted to the applicant to execute the decree. The applicant also seeks costs. The application is supported by an affidavit sworn by Frank Mwangi Njuguna he reiterates that the bill was taxed as stated above and that the respondent has not settled the taxed costs despite reminders. The Notice of Motion is the subject of this ruling.
3. The respondent opposed the application through grounds of opposition in which he took the position that he never instructed the applicant to act for him in any matter, that the certificate of costs has not been served upon him in person, that there is no provision in law for judgment and decree by way of Notice of Motion and that under sections 48 and 49 of the Advocates Act it is mandatory that a plaint be filed and a decree issued before an advocate can execute for his costs.
4. The application initially came up for hearing before Hon. Lady Justice J. Mulwa who ordered that it be transferred to this court owing to jurisdictional concerns. Upon arrival in this court, the matter was assigned a new case number as per the title above. At the hearing of the application before this court, parties relied entirely on the material on record and urged the court to render a ruling.
5. I have considered the application and the grounds of opposition. There is no dispute and the record indeed confirms that the bill of costs was taxed at KShs 1,557,646 on 22nd August 2017 and that a Certificate of Taxation was issued on 22nd August 2017. The record further reveals that although the applicant had initially filed Chamber Summons dated 4th September 2017 seeking setting aside of the decision of the taxing officer, parties later filed a consent on 12th October 2017 whose effect was that the costs payable be retained at KShs 1,557,646 and that the said amount be paid within 30 days of the consent. In the circumstances, both the liability to pay costs and the quantum thereof are not in dispute. Similarly, the question of serving the certificate of costs upon the respondent in person does not arise.
6. Regarding the respondent's arguments that there is no provision in law for judgment and decree by way of Notice of Motion, suffice it to point out that the present application is brought under **Section 51(2) of the Advocates Act**. The entire section 51 provides:

51. General provisions as to taxation

- (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.**
- (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. As previously pointed out, both the liability to pay costs and the quantum of are not in dispute in this matter. There would thus be nothing to stop the court from entering judgment for those costs. There are many authorities in support of that approach. See **Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited [2012] eKLR** and **Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR**. Indeed, such an approach is in line with the duty cast upon the court under **Article 159 (2) (d)** of the **Constitution** to administer justice without undue regard to procedural technicalities. I therefore see no reason why judgment should not be entered as sought.

8. I therefore make the following orders:

- a. Judgment is hereby entered for the applicant and against the respondent for KShs 1,557,646 being the amount stated in the Certificate of Taxation issued on 22nd August 2017.
- b. Decree in respect of the aforesaid sum to be issued in the usual manner provided within the Civil Procedure Rules and execution thereof to be equally done in the usual manner provided within the Civil Procedure Rules.
- c. Costs of Notice of Motion dated 25th January 2018 are awarded to the applicant.

9. Ruling herein was to be delivered on 13th February 2019 but was delayed since I proceeded on medical leave. The delay is regretted.

Dated, signed and delivered in open court at Nakuru this 15th day of July 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the applicant

No appearance for the respondent

Court Assistants: Beatrice & Lotkomoi