



Chege Kibathi & Co. Advocates v Embakasi Ranching Company Limited (Miscellaneous Application E088 of 2022) [2024] KEELC 72 (KLR) (22 January 2024) (Ruling)

Neutral citation: [2024] KEELC 72 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E088 OF 2022
MD MWANGI, J
JANUARY 22, 2024**

BETWEEN

CHEGE KIBATHI & CO. ADVOCATES APPLICANT

AND

EMBAKASI RANCHING COMPANY LIMITED RESPONDENT

RULING

(In respect of the application by the Advocate/Applicant for entry of judgment after a certificate of costs)

Background

1. In this matter, the Advocate's Bill of Costs dated 3rd June, 2022 was taxed on the 19th October, 2022 and a Certificate of Taxation subsequently issued on dated 19th January, 2023.
2. The application before me is the Advocate's application dated 30th January, 2023 seeking entry of judgement for the taxed costs of Kshs. 202,616.40/= in accordance with the certificate of taxation. The Advocate/Applicant also prays for interest at the rate of 14% per annum from the date of issue of the certificate of costs until payment in full.
3. The application is premised on the grounds on the face of it and supported by the Affidavit of one Dennis Juma sworn on 30th January, 2023. The deponent avers that the Certificate of Costs issued herein has neither been settled nor set-aside. The Respondent has not filed a Reference regarding the said taxation despite being served with the same. It is therefore in the interest of justice that the application is allowed.



Issues for Determination

4. Having perused the Notice of Motion application dated 30th January, 2023 together with the supporting affidavit thereof, I am of the view that the only issue for determination is whether the court should enter judgment in favour of the Advocate/Applicant as prayed.

Determination

5. It is not disputed that the Advocate's bill of costs dated 3rd June, 2022 was taxed on 19th October, 2022 and allowed as against the Respondent in the sum of Kshs. 202,616.40. A certificate of taxation was subsequently issued on 19th January, 2023. The ruling on taxation of the Advocate's bill of costs has not been challenged by the Client in accordance with the provisions of Rule 11 of the [Advocates Remuneration Order](#).
6. Section 51 of the [Advocates Act](#) provides:
 - “(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. It is clear from the subsection (2) that the certificate of costs once issued by the Taxing officer is final unless set a side or altered by the court.
8. In the case of [Lubulellab & Associates Advocates v N. K. Brothers Limited](#) [2015] eKLR 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”.
9. That being the case, the court has no option but to enter judgement for the Applicant against the Respondent for the sum of Kshs. 202,616.40/=.
10. On the aspect of interest, this court will be guided by the court of Appeal decision in [Otieno, Ragot & Company Advocates v Kenya Airports Authority](#) (2021) eKLR. The Court of Appeal while considering an appeal from the decision of the High Court held that: -
 - “Additionally, it is distinctive that a review of the applicant's Bill of Costs does not disclose that the applicant included a charge for “interest at 14% per annum on his (her) disbursements and costs...” in the Bill of Costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the Bill of Costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the Civil Procedure”.



11. I have perused the Bill of Costs that was drawn, filed and presented by the Applicant herein. The Applicant did not include a charge for interest at 14% per annum in the bill of costs. Accordingly, guided by the above cited binding authority, Rule 7 cannot therefore apply in this case. I am left with the discretion under the provisions of section 26 of the *Civil Procedure Act*.
12. There is no indication on record whether and if so, when the certificate of taxation was served upon the Client/Respondent, if at all. Exercising this court's discretion under Section 26 of the *Civil Procedure Act*, I will award the Applicant interest at the rate of 14% per annum but from the 30th January, 2023 (being the date of filing of the application) until payment in full.
13. The Advocate/Applicant shall also have the costs of this Application.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JANUARY, 2024

M.D. MWANGI

JUDGE

In the virtual presence of:

No appearance by the parties.

Court Assistant: Yvette

M.D. MWANGI

JUDGE

