



Njeru, Nyaga & Co. Advocates v Thome v Residents Welfare Association (Miscellaneous Application E039 of 2021) [2024] KEELC 1532 (KLR) (21 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1532 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E039 OF 2021**

MD MWANGI, J

MARCH 21, 2024

BETWEEN

NJERU, NYAGA & CO. ADVOCATES ADVOCATE

AND

THOME V RESIDENTS WELFARE ASSOCIATION CLIENT

RULING

Background

1. The application before me is the Advocate's Notice of Motion application dated 14th December 2021 seeking entry of judgement for the taxed costs of Kshs. 845,486/= in accordance with the certificate of taxation issued on 5th December 2023 after the taxation of the Advocate – Client bill of costs. The Advocate further prays for interest on the said amount at the rate of 14% per annum from 19th May 2022 until payment in full as well as the costs of the application.
2. The application is premised on the grounds on the face of it and supported by the Affidavit of one Martin Njeru Nyaga. The deponent has attached a copy of the certificate of taxation confirming the taxation of the Advocate-client costs.
3. The Respondent filed grounds of opposition dated 13th February 2024. The Respondent concedes that the Advocate-Client bill of costs dated 5th March 2021 was taxed on 19th May 2022 and has not been set aside. The Respondent further asserts that the Advocate/Applicant is at liberty to execute the certificate of costs dated 5th December 2023 against it under the Civil Procedure Rules 2010. The Respondent therefore argues that the application before the court is bad in law and is an abuse of the process of court. It should therefore be dismissed with costs.



Issues for Determination

4. Having perused the Notice of Motion application dated 22nd January, 2024 together with the supporting affidavit thereof and the grounds of opposition filed by the Respondent, 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. Section 51 of the *Advocates Act* provides that:

- “(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.”

6. 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.
7. The certificate of costs/taxation however is not the final step as the Respondent alleges. There is a requirement that judgement be entered for the amount certified. A party cannot execute a certificate of costs/taxation before judgement has been entered and a decree subsequently extracted.
8. In the case of *Lubullelah & Associates Advocates –vs- 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.”

9. That being the case herein, the court enters judgement for the Applicant against the Respondent for the sum of Kshs. 845,486/=with interest at court rates from 19th May 2022 until payment in full.
10. The Advocate/Applicant shall also have the costs of this Application as prayed for.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MARCH, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Kirui for the Advocate/Applicant

Ms. Nyambura for the Client/Respondent



Court Assistant: Yvette

M.D. MWANGI

JUDGE

