



**Republic v Chief Land Registrar; Nyongesa (Interested Party); Mwangi (Exparte Applicant)
(Judicial Review Application 33 of 2019) [2024] KEELC 1524 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
JUDICIAL REVIEW APPLICATION 33 OF 2019**

A NYUKURI, J

MARCH 20, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF SECTIONS 18 & 19 OF
THE LAND REGISTRATION ACT NO. 3 OF 2012**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF LAND REGISTRAR RESPONDENT

AND

BENJAMIN MAKOKHA NYONGESA INTERESTED PARTY

AND

CHARLES MURIU MWANGI EXPARTE APPLICANT

RULING

Introduction

1. Before court is a notice of motion dated December 13, 2023 filed by the interested party seeking the following orders;
 - a. Spent



- b. That the honorable court be pleased to enter judgment for the applicant against the respondent for the sum of Kshs. 250,475/= (Kenya shillings two hundred and fifty thousand, four hundred and seventy five only) as appears on the certificate of taxation dated 2nd August 2022 together with interest from the date of taxation ruling, that is from 20th July 2022 till payment in full.
 - c. That the applicant be allowed to execute the judgment herein against the respondent herein.
 - d. That the costs of this application be provided for.
2. The application is premised on the grounds on its face together with the supporting affidavit of Benjamin Makokha Nyongesa, the interested party/applicant. The applicants' case is that the party and party bill of costs dated 3rd December 2021 was taxed in the sum of Kenya shillings 250,475/= and that the applicant seeks that judgment be entered against the ex parte applicant/responded for the said sum for purposes of execution. He attached the ruling taxation and copy of certificate of taxation.
 3. The application is not opposed.

Analysis and determination

4. Having considered the application and the affidavit in support thereto, the only issue that arise for determination is whether judgment should be entered in terms of the certificate of costs for purposes of execution.
5. The history of this suit is that by chamber summons dated 25th June 2019, the ex parte applicant filed a judicial review application seeking leave to apply for orders of mandamus against the respondent. By a preliminary objection dated 24th July 2019, the interested party objected to the chamber summons on the grounds that the same was sub judice. And by a ruling dated 30th April 2021, this court struck out the chamber summons dated 25th June 2019 and awarded costs to the interested party. Consequently, the interested party filed party and party bill of costs which was taxed on 2nd August 2022.
6. Therefore the application dated 13th December 2023 was filed by the interested party ostensibly for purposes of executing the taxed costs pursuant to section 51 of the *Advocates Act*. The reason the applicant seeks for judgment of this court to be entered in terms of the certificate of costs is for purposes of executing the certificate of costs.
7. Section 51 (1) and (2) of the *Advocates Act* makes reference to taxation of an advocate's bill of costs in a matter filed by the advocate and provides as follows;

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.
8. Therefore, section 51 above refers to an advocate's bill of costs, which should be filed in the matter of such advocate, thus where the advocate appears as a litigant. Hence in a suit where such advocate's bill is taxed, the certificate of costs is not an order capable of execution as it is and therefore an application



to enter judgment in terms of the certificate of costs is necessary for purposes of execution of the taxed sum.

9. It is therefore my view that section 51 (2) is in reference to a matter where an advocate- client bill of costs has been filed and where the advocate is one of the litigants, but does not apply in respect of party and party costs in a matter where the advocate is not a party. This is because, if there is already a determination of the original primary suit between parties in a suit where the advocate is not a party but merely representing one of the parties thereto, then entering judgment on a certificate of costs pursuant to taxation of party and party costs, will result in two final determinations, meaning there will be a determination on the parties' rights and a judgment on the party and party bill of costs, which in my view would be absurd and not the desired consequence of the provisions of Section 51 of the Advocates Act. I hold the view that where there is already a final determination of the dispute between the primary parties in a suit, whether the order is a positive or negative order, that determination, judgement or order is capable of being executed as it is and a certificate of costs resultant from such determination ought to be executed on the basis of the final determination of that matter as such certificate is not a stand-alone determination like in a matter filed by an advocate in an an advocate-client taxation. In addition, if a judgment on party and party costs were to be entered in a matter where parties rights have already determined, it means that there will be the judgment on the main suit between the parties, and the judgment on costs, which in my view would be improper.
10. In this matter, there is already a determination on the rights of the parties in this suit and there is no advocate who is a party to these proceedings. Therefore, the order striking out this suit made on 30th April 2021 is sufficient and capable of being executed as it is without giving a judgment on party and party costs.
11. For the above reasons, I find no merit in the application dated December 13, 2023 and I hereby dismiss the same with no orders as to costs.
12. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 20TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

A. NYUKURI

JUDGE

In the Presence of;

Mr. Mutua for the Applicant

No appearance for the respondent

Abdisalam – Court Assistant

