



REPUBLIC OF KENYA



CM Advocates LLP v Nairobi City County & another (Miscellaneous Application E270 of 2022) [2024] KEELC 1680 (KLR) (19 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1680 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E270 OF 2022**

**MD MWANGI, J
MARCH 19, 2024**

BETWEEN

CM ADVOCATES LLP ADVOCATE

AND

NAIROBI CITY COUNTY 1ST CLIENT

NAIROBI METROPOLITAN SERVICES 2ND CLIENT

RULING

1. The application before me is the Advocate's Notice of Motion application dated 11th January, 2024 seeking entry of judgement for the taxed costs of Kshs. 32,892,485/= in accordance with the certificate of taxation issued on 9th January 2024 after the taxation of the Advocate – Client bill of costs.
2. The application is premised on the grounds on the face of it and supported by the Affidavit of one Caroline Kendi Kithinji sworn on 11th January, 2024. The deponent has attached a copy of the certificate of taxation confirming the taxation of the Advocate-client costs at Kshs. 32,892,485/=.
3. Though the application was duly served on the Respondent and an affidavit of service filed, the Respondent did not file a response to the said application.

Issues for Determination

4. Having perused the Notice of Motion application 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. 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. In the case of *Lubulellah & 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.”

8. That being the case herein, the court enters judgement for the Advocate/Applicant against the Respondent for the sum of Kshs. 32,892,485/=.

9. The Advocate/Applicant has prayed for interest at the rate of 14% per annum from the 5th February 2022 until payment in full. The Advocate explains that the Bill of costs was served upon the Respondents on 4th January 2022. Therefore, the 30 days contemplated under paragraph 7 of the Advocates Remuneration Order lapsed on 4th February 2022.

10. On the aspect of interest, this court will be guided by the court of Appeal decision in *Otieno, Ragot & Company Advocates Vs Kenya Airports Authority* (2021) eKLR. The Court of Appeal while considering an appeal from the decision of the High Court held that: -

“As such, the rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursements and costs following submission of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one month from the date of delivery of the bill or fee note. The learned judge’s reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection”.

11. Accordingly, since there is no contestation that the Bill of costs was served upon the Respondents on 4th January 2022 as averred by the Advocate/Applicant, I will award the Advocate/Applicant interest at court rates as prayed for.

12. The Advocate/Applicant shall also have the costs of this Application as prayed for.

13. Consequently, judgement is entered in favour of the Advocate/Applicant against the Respondents for the sum of Kshs. 32,892,485/= with interest at the rate of 14% per annum from the 5th February 2022 until payment in full. The Advocate/Applicant shall also have the costs of this application.



It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MARCH, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Gisemba for the Advocate/Applicant

N/A by the Respondents

Court Assistant: Yvette

M.D. MWANGI

JUDGE

