



Nyongesa t/a Nyongesa & Co Advocates v Moorgate Investment Limited (Miscellaneous Application E002 of 2023) [2024] KEELC 4005 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 4005 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION E002 OF 2023**

**EK MAKORI, J
APRIL 25, 2024**

**BETWEEN
DUNCAN NYONGESA T/A NYONGESA & CO ADVOCATES APPLICANT
AND
MOORGATE INVESTMENT LIMITED RESPONDENT**

RULING

1. The applicant filed an application dated 22nd May 2023 seeking to have a Certificate of costs dated 10th May 2023 in respect of the taxation order made on 26th April 2023 adopted as the judgment and decree of this Court, with interest at 14% to be calculated from 11th January 2023, when the bill for taxation was filed. The applicant also requested that costs for the application be provided.
2. The respondent immediately thereafter, through an application dated 30 June 2023, seeks to have the applicant's application stayed and the applicant summoned to testify on the manner in which he served the respondent before the taxation was heard.
3. The Court directed that the applications be heard in tandem. Parties were also directed to file written submissions, which should include their arguments, evidence, and any relevant legal precedents.
4. The applicant contends that he acted for the respondent in Malindi ELC No. 67 of 2016—Moorgate Investment v Romsard Limited & 3 others. The respondents later removed him, instructing another advocate. This necessitated the filing of the contested bill of costs. He stated that after service, the taxing master, a court officer responsible for assessing and verifying the costs, taxed the same at Kshs. 970.173.90, hence the current application to have the same adopted as the judgment and decree of this Court.
5. The respondent averred that there never existed a client-advocate relationship between the parties since the respondents never, through a board resolution, appointed the applicant as its advocate in the



primary suit. Besides, the bill was never served on the respondents, and, therefore, there is a need for his cross-examination.

6. The applicant believes that the issues raised in its application can only be raised before the taxing master, not this Court. The procedure is set in section 51(2) of the *Advocates Act*, as emphasized in *Tom Ojienda v Nairobi City Council* (Misc. App. No. E620 of 2019[2022] eKLR.
7. This Court, as an impartial entity, will determine whether to adopt the certificate of costs as the judgment and decree of this Court or stay the same as applied by the respondent.
8. I have not seen the respondent's response to the bill's adoption as this Court's judgment and decree. I will take it that the objection and subsequent application will counter the applicant's application.
9. The issues raised by the respondent regarding whether the respondents had instructed the applicant to act for them and whether the bill was properly served on the respondent can only be addressed by the taxing master first.
10. In *Tom Ojienda & Associates v Nairobi City County* (Miscellaneous Application E620 of 2019) [2022] KEHC 86 (KLR) (Commercial and Tax) (4 February 2022) (Ruling). The Court held as follows:

The applicable law is found at Section 51(2) of the *Advocates Act*, which reads as follows;

“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. The above mentioned provision was reiterated in the case of *Musyoka & Wambua Advocates versus Rustam Hira Advocate* (2006) eKLR, where it was held: -

“Section 51 of the *Act* makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....

9. The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: a. the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; b. the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and c. there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.
10. The Court takes into consideration that the Certificate of Taxation dated 9th June 2020 has not been set aside or impugned by this court.
11. This position was reiterated in, where 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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”

11. The respondent has neither moved the taxing master nor filed an appropriate reference to impeach the current certificate of cost. The application to stay the adoption of the said costs, dated 30th June 2023, was wrongly filed before this Court. It is dismissed with costs.
12. On the other hand, the application for the adoption of the certificate of costs as judgment and decree of this Court, dated 22nd May 2023, is hereby allowed. The interest will be reckoned from 11th January 2023 at 14% per annum since no amount has ever been paid to the applicant. I will also award the applicant the costs of the application.

THIS RULING IS DATED, SIGNED, AND DELIVERED AT MALINDI ON THIS 25TH DAY OF APRIL 2024 IN THE ABSENCE OF PARTIES. SINCE THE COURT WAS NOT SITTING, IT WILL BE TRANSMITTED ELECTRONICALLY, AND ALL PARTIES WILL BE EMAILED THE SAME.

E. K. MAKORI

JUDGE

