



C.M Thuku & Company Advocates v Kimani (Environment & Land Miscellaneous Case E216 of 2022) [2024] KEELC 4281 (KLR) (23 May 2024) (Judgment)

Neutral citation: [2024] KEELC 4281 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E216 OF 2022**

JA MOGENI, J

MAY 23, 2024

BETWEEN

C.M THUKU & COMPANY ADVOCATES ADVOCATE

AND

ANNAH WANJIRU KIMANI CLIENT

JUDGMENT

1. The application before me is for the adoption of the Certificate of Costs herein as a Judgment of the Court.
2. On 7/02/2023, the Advocate/Client Bill of Costs was taxed by the Deputy Registrar and the applicant extracted a Certificate of Taxation dated 22/02/2024. The Respondent/Client filed a Reference dated 3/04/2023 seeking to set aside the taxation made on 7/02/2023 by the Taxing Master.
3. This court vide a ruling dated 31/01/2024 dismissed the reference meaning therefore that the Certificate of Taxation has not been successfully challenged, varied, set aside and/or altered.
4. The advocate/applicant contends that pursuant to Section 51 (2) of the *Advocates Act*, the Advocate/Applicant herein is entitled to Judgment for that amount.
5. However, the Client/Respondent has averred through a Replying Affidavit sworn on 29/02/2024 that the Advocate was not entitled to be awarded interest on the taxed costs that the said interest has been factored in the decreed sum. Essentially what the respondent is challenging is the interest of 14%.
6. The respondent vide the replying affidavit has admitted that the advocate-client bill of costs was taxed at Kshs. 975,0000 and that she had already paid Kshs. 300,000 as evidenced by the receipts annexed and marked AWK1 dated 04/02/2019 for Kshs. 200,000, 26/12/2019 for Kshs. 50,000 and 23/12/2020 for Kshs. 50,000.



7. She averred that she would settle the outstanding amount of Kshs. 675,000 by first making a down payment of Kshs. 300,000 and thereafter make payment by instalments of Kshs. 50,000 per month until she clears the outstanding bill.
8. The applicant in response to the respondent's replying affidavit has filed submissions dated 18/03/2024 and averred that the receipts that the respondent has attached to the replying affidavit bear no relation to the claim herein. Further the issues of interest were already dealt with by the Taxing Master. The applicant submits that the respondent has not shown any reason why she should be allowed to pay the taxed bill through instalments. No evidence is placed before the court to attest to any hardship that the respondent has in settling the taxed amount.
9. He submits that the application is merited and it has fully met the conditions set in Section 51(2) of the [Advocates Act](#) and so the court should enter judgment for the application dated 22/02/2024.
10. Rule 7 of the [Advocates Remuneration Order](#) provides as follows: -

“An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided such claim for interest is raised before the amount of the bill has been paid or tendered in full.”
11. That provision is instructive and is as clear as day light. Accordingly, the advocate may charge interest at the rate of 14% p. a provided that the claim for interest was raised before the amount of the bill has been paid or tendered in full.
12. Further, Section 51 (2) of the [Advocates Act](#) provides 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.”
13. In the case of [Musyoka & Wambua Advocates vs RustamHira Advocate](#) (2006) eKLR the court held that Section 51 of the [Advocates 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.
14. 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: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) 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. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.
15. In the instant application, it is not in dispute that the said decision by the Taxing Officer has not been set aside and/or altered, and the reference filed by the respondent dated 3/04/2023 was dismissed vide this court's ruling of 31/01/2024.



16. When dealing with a similar application, the court in *Lesinko Njororge & Gathogo Advocates vs Invesco Assurance Co. Ltd* (2021) eKLR held as hereunder;

“The certificate of a taxing officer by whom it 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.”

17. Similarly, in the case of *Lubulellah & Associates Advocates vs N K Brothers Limited* (2014) eKLR the Court stated as follows:

“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.”

18. I have perused the certificate of taxation dated 22/02/2024. Having done so, I am satisfied that there is no alteration to the said certificate. There is also no evidence that the same has been set aside. Accordingly, the certificate of taxation dated 22/02/2024, is final with regard to the amount of costs being Kshs. 975,000 [Nine Hundred and Seventy Five Thousand].

19. Accordingly, in terms of the provision of Section 51 (2) of the *Advocates Act*, I am inclined to award judgment, which I hereby do, in the sum of Kshs. 975,000 to the advocate/applicant.

20. Equally, I award interest at the rate of 14% in line with Rule 7 of the Advocates Remuneration order.

21. The said interest should be payable one month after the bill was tendered that is on 9/06/2022 until payment in full.

22. The advocate/applicant will also have the costs of the application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2024.

MOGENI J

JUDGE

In the Virtual presence of:

Ms. Waweru for Respondent

Mr. Thuku for Applicant

Caroline Sagina: Court Assistant

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MOGENI J

JUDGE

