



**Mereka & Company Advocates v Everest Enterprises Ltd (Environment and Land Miscellaneous Application E008 of 2023) [2024] KEELC 4339 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4339 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2023**

**CK NZILI, J**

**MAY 22, 2024**

**BETWEEN**

**MEREKA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**EVEREST ENTERPRISES LTD ..... RESPONDENT**

**RULING**

1. By an application dated 2.2.2024, the court is asked under section 51(2) of the *Advocates Act* to enter judgment for Kshs.20,101,200/= in terms of the certificate of taxation dated 4.1.2024 together with interest at 14% from the said date and a decree be issued for enforcement or execution against the respondent. The grounds supporting the application are on its face, and the affidavit of David Mukii Mereka sworn on 2.2.2024.
2. Briefly, the applicant avers that a bill of costs was filed on 16.2.2023 for a sum of Kshs.106,356,200/= but was taxed at Kshs.20,101,200/= as per a certificate of taxation dated 4.1.2024, a copy attached as annexed marked DMM "1". The applicant avers that no stay of execution was granted or sought and or a reference filed. Further, the applicant states that the respondent has failed or neglected to pay the said costs despite repeated reminders.
3. When the application came for hearing on 5.3.2024, Miss Maina for the respondent, sought 21 days to respond to the application. The court granted the same and directed parties to file written submissions by 5.4.2024. It appears the respondent did not file any response as ordered or at all.
4. The applicant relied on written submissions dated 2.4.2024. It is submitted that under Sections 51(2) of the *Advocates Act* (Cap 16), a court can enter judgment for the sum certified to be due with costs. In this case, a bill of costs was taxed on 24.11.2023, and no objection or reference was filed under Rule 11 of the Advocate's Remuneration Order. Given that the certificate of costs has not been set aside or altered the issue of advocates/clients' costs is conclusive as ascertained by the taxing officer. Reliance was



placed on *Anti-counterfeit Agency vs Sherman Nyongesa & Matubia Advocate ELC Misc Application E046 of 2022* (2024) KEELC 1016 (KLR) (28<sup>th</sup> February 2024 (Ruling) and *Lubullelah & Associates Advocates Ltd vs N.K Brothers* (2014) eKLR. The applicant submitted that since it has satisfied the three requirements as set out in the cited case law, the application should be allowed with costs as per Rule 7 of the Advocate's Remuneration Order.

5. There is no dispute that a bill of costs was taxed in favor of the applicant, a certificate of costs and has not been set aside, varied and or a reference made. Though the respondent was given an opportunity to respond to the application within 21 days it chose not to either file a replying affidavit or written submissions.
6. Section 51(2) of the *Advocates Act* empowers advocates upon obtaining a certificate of costs to apply for entry of judgment based on the taxed bill. See *Nyachoti and Co. Advocates vs Sayani Investment Ltd* (2021) eKLR, *Makecha & Co. Advocate vs Central Bank of Kenya* (2020) eKLR, *Lubullelah and Associates Advocates vs NK brothers Ltd* (supra), *Otieno, Ragot & Co. Advocates vs Kenya Airports Authority* (2021) eKLR and *Amondi & Co. Advocates vs County Government of Kisumu* (2022) eKLR.
7. In *Abmednassir Abdikadir & Co. Advocates vs National Bank of Kenya* (2007) eKLR, the court observed that there are three limbs to section 51 (1) of the *Advocates Act*, namely, a certificate of costs, the jurisdiction of the court and lastly, the circumstances in which the court may exercise its discretion to enter judgment in terms of the certificate of costs.
8. In *Lubullelah & Associate Advocates vs NK Brothers Ltd* (supra), it was observed that an applicant is not required to file a suit for the recovery of costs, since a certificate of costs is final as to the amount of the costs. The court said further that Section 51 (2) of Cap 16, aids in expeditious disposal of cases relating to the recovery of advocates' client costs as long as the costs have been taxed by and certified under the hand of a taxing master, by a certificate of costs, the certificate of costs has not been set aside or stayed or appealed against on a reference filed upon it and that there is no dispute on the retainer.
9. Applying the preceding case law, the court has looked at the certificate of costs. There is no pending reference, appeal, setting aside, or a stay of execution application which the respondents have brought to this court's attention as a bar to the entry of the judgment.
10. In the circumstances, I enter judgment in favor of the applicant against the respondent in the sum of Kshs.20, 101,200/= that shall attract interest at 14% per annum after 30 days from the date of taxation of the bill.
11. Costs of the application to the applicant.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 22<sup>ND</sup> DAY OF MAY, 2024**

In presence of

C.A Kananu

Njoroge for Mereka for the applicant

**HON. C K NZILI**

**JUDGE**

