



Limo & Njoroge Advocates v Pinkerton's Kenya Ltd (Miscellaneous Case E043 of 2023) [2024] KEELRC 288 (KLR) (19 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 288 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE E043 OF 2023
JK GAKERI, J
FEBRUARY 19, 2024**

BETWEEN

LIMO & NJOROGE ADVOCATES ADVOCATE

AND

PINKERTON'S KENYA LTD CLIENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 13th October, 2023 seeking Orders That:-
 1. The Certificate of Taxation issued on 19th September, 2023 be adopted as a judgement of this court for the applicant against the respondent for the sum of Kshs.231,068.00 with interest at 14% p.a. from 13th November, 2022 until payment in full.
 2. Costs of the application be provided for.
2. The Notice of Motion is based on the provisions of Section 51(2) of the *Advocates Act* and Rule 7 of the *Advocates (Remuneration) Order*, 1962 and the grounds set out on its face and the Supporting Affidavit sworn by Pamba Ouma on 13th October, 2023 who deposes that Respondent instructed the applicant to represent it in Nairobi MCELRC No. E202 of 2021 which representation came to an end when the applicant ceased to act in the matter and demanded final fees *vide* letter dated 13th October, 2022.
3. The affiant deposes that thereafter, he filed the Advocate-Client Bill of Costs dated 1st March, 2023 which was taxed at Kshs.231,068.00 and the court issued a Certificate of Taxation which the affiant emailed to the Respondent.
4. That the duration within which a reference may be filed has since lapsed and the certificate remains unsatisfied.



5. That it is in the interest of justice that the orders sought be granted to enable the applicant realize the taxed amount and award interest in terms of Rule 7 of the [Advocates Remuneration Order](#), 1962.
6. The Respondent did not file a response.

Applicant's submissions

7. Counsel submitted that the Deputy Registrar taxed the Advocate Bill of Costs dated 1st March, 2023 and delivered a ruling dated 3rd August, 2023 and a Certificate of Taxation was issued on 19th September, 2023 and served on the Respondent and the applicant, thus prays for its adoption as a judgment of this court under Section 51(2) of the [Advocates Act](#) with interest under Rule 7 of the [Advocates Remuneration Order](#), 1962.
8. Counsel urged the court to grant the application as it was uncontested.

Determination

9. The singular issue for determination is whether the applicant's Notice of Motion is merited.
10. By the Notice of Motion dated 13th October, 2023, the Applicant is invoking the court's jurisdiction by a Miscellaneous Application and relies on Section 51(2) of the [Advocates Act](#) as the foundation of the application.
11. Section 51(2) of the [Advocates Act](#) provides;

“The certificate of the taxing officer by whom any bill been taxed shall, unless it is set aside or altered by the court, be final as to the amount of 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.”
12. The pith and substance of the applicant's Notice of Motion is whether this court has jurisdiction granted the orders sought.
13. Documents on record reveal that the applicant represented the Respondent in CMELRC No. E202 of 2021 having entered appearance for the Respondent on 13th April, 2021.
14. It is, however unclear to the court whether the suit in the lower court was heard and determined or at what stage it is.
15. What is evident is that the applicant filed an Advocate-Client Bill of Costs dated 1st March, 2023 on 2nd March, 2023 amounting to Kshs.231,068.00 and the Respondent was served with a hearing notice electronically on 5th June, 2023 via email dated on even date at 5.04 pm and an Affidavit of service filed.
16. A certificate of taxation dated 19th September, 2023 was issued by the Deputy Registrar of this court and the same was forwarded to the Respondent *vide* email dated 20th September, 2023 at 11.49 am addressed to Mr. Henry Kithome and Patrick Watuka.
17. It is not in dispute that the instant notice of motion is unopposed and as correctly asserted by the Applicant, the time allowed for preferring a reference against the Taxing Officer's decision has lapsed and the certificate remains unsatisfied.
18. The court is satisfied that the Certificate of Taxation herein has neither been set aside nor altered by any court.



19. Guided by the provisions of Section 51(2) of the *Advocates Act*, the court is persuaded that the instant Notice of Motion is merited and is granted as prayed.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 19TH DAY OF FEBRUARY 2024

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

