



**Apollo Muinde & Partners Advocates v Public Service Board,
County Government of Tana River (Miscellaneous Civil Application
E70 of 2020) [2024] KEELRC 227 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 227 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E70 OF 2020
AN MWAURE, J
FEBRUARY 13, 2024**

BETWEEN

APOLLO MUINDE & PARTNERS ADVOCATES APPLICANT

AND

**PUBLIC SERVICE BOARD, COUNTY GOVERNMENT OF TANA
RIVER RESPONDENT**

RULING

1. The Applicant filed a Notice of Motion dated 3rd October 2023 seeking orders that:
 1. This Honourable Court be pleased enter judgment in favour of Apollo Muinde & Partners Advocates against the Respondent for the sum of Kshs 240,248 together with interest at the rate of 16% per annum from 16th June 2022 until payment in full.
 2. The costs of this Application be borne by the Respondent.
2. The Application was supported by an Affidavit sworn by, Apollo Muinde.

Applicant's Case

3. The Applicant avers that the Respondent retained the Applicant advocates to represent them in ELRC Judicial Review Cause No. 5 of 2019, *Kenya National Union of Nurses v The County Public Service Board, County Government of Mombasa & others*.
4. The Applicant avers that the Respondent failed to pay its fees and the Applicant Advocates filed a Bill of Costs on the 21.07.2020 against the Respondent, which was duly delivered to the Respondent on 24.11.2020.



5. The Applicant avers that on 16.06.2022, the Taxing Officer assessed the said Bill at the sum of Kshs 240,248 and a certificate of taxation has been issued in the Advocate's favour certifying the said amount due to the Advocate.
6. The Applicant avers that the Certificate of Taxation has not been set aside or altered by the court, hence it is final.
7. The Applicant avers that this court has jurisdiction to enter judgment in favour of the Applicant for the sum certified due for Kshs 240,248 with interest at the rate of 16% per annum from the 16.06.2022 until payment in full.

Analysis and Determination

8. 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.”
9. 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 that: -
 - “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.

The Court takes into consideration that the Certificate of Taxation dated 9th June 2020 has not been set aside or impugned by this court.

This position was reiterated in *Lubulellah & Associates Advocates versus N K Brothers Limited* [2014] eKLR 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.”

10. In the instant case, the Respondent has not made application to set aside, stay and/or appeal against the Taxing Officer’s decision and Certificate of Taxation dated 02.08.2022. Further, the Respondent has not contested to the Applicant Advocate’s application herein and so the same is uncontroverted.
11. Accordingly, the court enters judgment in favour of the Applicant Advocate against the Respondent for the sum of Kshs 240,248 as per their prayer.
12. In respect to interest at the rate of 16% per annum, in Tom Ojienda & Associates v Nairobi City County (supra), the court held as follows:

“On the issue of interests on the taxed costs; even though the application is uncontested the Applicant has not tendered any evidence that it raised the issue of interest with its client when tendering the Bill of Costs and is therefore found to have failed to have satisfied the conditions as set out in Rule 7 of the Advocates (Remuneration) Order which stipulates that:

“An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiry to one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount has been paid or tendered in full.”

In any event the Rule clearly stipulates that such claim for interest is limited to costs and disbursements; it does not provide for interest on the full taxed amount as prayed for by the applicant in its application.”

13. In view of the foregoing, the Applicant is denied interest as Rule 7 of the Advocates (Remuneration) Order clearly stipulates that an advocate may charge interest at 14% per annum on his disbursements and costs and not on the entire Bill of Cost.
14. In conclusion judgment is entered in favour of the applicant for kshs 240,248/- and costs of the application are also awarded to the applicant as well.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF FEBRUARY, 2024.

ANNA NGIBUINI MWAURE

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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

