



Kitoo & Associates Advocates v Lavington Security Limited (Miscellaneous Application E077 of 2022) [2023] KEELRC 1110 (KLR) (4 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1110 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E077 OF 2022**

AK NZEI, J

MAY 4, 2023

BETWEEN

KITOO & ASSOCIATES ADVOCATES APPLICANT

AND

LAVINGTON SECURITY LIMITED RESPONDENT

RULING

1. The application before me is a Notice of Motion dated November 30, 2022 and expressed to be brought under Section 51(2) of the [Advocates Act](#) and Section 3A of the [Civil Procedure Act](#). The Applicant prays:-
 - a. that judgment be entered in favour of the Advocate, Kitoo & Associates Advocates, against the client, Lovington Security Limited, in the sum of ksh 462,392 together with interest thereon from the date of filing the application until payment in full.
 - b. that the Court do issue a decree in respect of the Certificates of taxed costs given on November 14, 2022 and July 29, 2022, and all issued on November 23, 2022, and that the Applicant be at liberty to execute for recovery of the same in such manner as a decree of this Honourable Court.
 - c. that costs of the application be provided .
2. The application is predicated on the supporting affidavit of Mary Kitoo Advocate sworn on November 30, 2022. It is deponed in the said affidavit, *inter-alia*:-
 - a. that the Respondent herein has been one of the Applicant's clients for a long time and that on instructions received from the Respondent on various dates, the Applicant provided legal services to the Respondent within and without Mombasa County.



- b. that arising from those instructions and legal services to the Respondent, the Respondent charged various amounts in legal fees and disbursements which were not settled when they fell due, despite demand.
- c. that the Applicant instituted legal proceedings against the Respondent in form of Advocate-Client Bills of Costs for taxation, which were taxed in favour of the Applicant as follows:
- i. Mombasa ELRC Misc App No. 25 of 2022 (Kitoo & Associates v Lovington Security Limited).....ksh. 115,425
 - ii. Mombasa ELRC Misc App No. 30 of 2022 (Kitoo & Associates v Lovington Security Limited).....ksh. 128,750
 - iii. Mombasa ELRC Misc App No. 42 of 2022 (Kitoo & Associates v Lovington Security Limited).....ksh. 82,320
 - iv. Mombasa ELRC Misc App No. 43 of 2022 (Kitoo & Associates v Lovington Security Limited).....ksh. 67,718
 - v. Mombasa ELRC Misc App No. 44 of 2022 (Kitoo & Associates v Lovington Security Limited).....ksh. 68,179
- Total ksh. 462,392
- d. that despite the certificates of costs having been served with demand, the Respondent has failed to settle the costs.
3. Copies of Certificates of Costs and demands for settlement of the certified costs, shown to have been served on the Respondent on November 27, 2022, are annexed to the aforesaid supporting affidavit of Mary Kitoo Advocate.
4. Although the application is shown to have been served on the Respondent on December 14, 2022 and an affidavit of service in that regard filed, the Respondent did not file any response to the application, which stands unopposed. Section 51(2) of the Advocates Act provides as follows:-
- “ the certificate of a 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 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.”
5. The taxing officers’ certificates of costs dated November 14, 2022 and July 29, 2022 respectively and issued on November 23, 2022 are not shown to have either been altered or set aside by this Court, and are not shown to be the subject of any dispute.
6. Consequently, the Applicant’s Notice of Motion dated November 30, 2022 is hereby allowed in the following terms:-
- a. Judgment is hereby entered for the Applicant against the Respondent for a total sum of ksh. 462,392 being the Applicant’s taxed and certified costs in this Court’s Misc. Application No 25 of 2022, 30 of 2022, 42 of 2022, 43 of 2022, and 44 of 2022.
 - b. A decree shall issue accordingly, and shall be extracted and executed as by law provided.
 - c. Interest on the decretal sum shall be calculated from the date of this Ruling.



d. Each party will bear its own costs of the application.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4TH MAY 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Ms. Kitoo for Applicant

N/A for Respondent

