



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**MISC. APPLICATION NO E023 OF 2020**

**MUTHAURA MUGAMBI AYUGI & NJONJO ADVOCATES.....APPLICANT**

**VERSUS**

**A.E. A LIMITED.....RESPONDENT**

**RULING**

1. Before me is a Notice of Motion Application dated 5<sup>th</sup> October, 2021, through which the Applicant, Muthaura Mugambi Ayugi & Njonjo Advocates, seek the following orders;

- a) *THAT this Honourable Court be pleased to enter Judgment as against the Respondent for certified amount of **Kshs 188,857.56** on the Certificate of Taxation herein dated 21<sup>st</sup> July, 2021.*
- b) *THAT the said sum of **Kshs 188,857.56** be paid with interest at the rate of 14% per annum from 3<sup>rd</sup> September, 2020, which is the date of filing the bill of costs herein, until payment in full.*
- c) *THAT pursuant to the entry of judgment, hereinabove, a decree be issued.*
- d) *THAT the costs of this Application be provided for.*

2. The Application is supported by the grounds on its face and on the depositions contained in the Supporting Affidavit sworn on 5<sup>th</sup> October, 2021, by Angela Cheronu.

3. The Application which is expressed to be brought section 51(2) of the Advocates Act, Order 51 rule 1 of the Civil Procedure Rules, 2010 and section 3 of the Employment and Labour Relations Court Act, is premised on the grounds that;

- a) *the Respondent instructed the Applicant to represent it in ELRC Appeal No. 5 of 2018 [Avery (East Africa) Limited vs Jones Muli Muthini & another], and of which the Applicant did;*
- b) *it was agreed between the Applicant and the Respondent that the fees for rendering such representation shall be paid to the Applicant but the said fees have never been settled;*
- c) *subsequently, the Applicant filed an Advocate-client bill of costs dated 3<sup>rd</sup> September, 2020 seeking a sum of Kshs 316,069.96 as legal fees as against the Respondent;*
- d) *on 13<sup>th</sup> November, 2020, the said Bill of costs was taxed at an all-inclusive sum of **Kshs 188,857.56** in favour of the Applicant;*
- e) *thereafter a Certificate of Taxation was issued on 21<sup>st</sup> July, 2021;*
- f) *the said Certificate of Taxation has never been set aside or altered; and*
- g) *the Respondent has failed and/or neglected to pay the said costs despite several reminders.*

4. The Respondent did not file any response to the Application despite being served with the same. On record is an Affidavit of Service sworn by Angela Cheronu stating that the Motion Application together with the hearing notice dated 7<sup>th</sup> December, 2021, were duly served

upon the Respondent through their known email addresses.

5. Accordingly, the Application was not opposed. Further, the Respondent did not attend Court on the date of the hearing nor send a representative despite being served.

6. Counsel for the Applicant, Ms. Cheronon urged the court to allow the Application as prayed.

7. I have considered the Application and the grounds in support thereof. The facts arising therefrom are quite straight forward. The Advocate-client Bill of costs was filed on 3<sup>rd</sup> September, 2020 and the same was taxed at **Kshs 188, 857.56** in favour of the Applicant and a Certificate of Taxation issued on 21<sup>st</sup> July, 2021. The said Certificate of Taxation has never been set aside or varied and the Respondent is yet to settle the same.

8. As stated, the Application has been brought pursuant to section 51(2) of the Advocates Act, amongst other provisions of the law.

9. Section 51(2) of the Advocates Act is in the following terms;

**“(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.”**

10. A clear construction of section 51(2) is that the Certificate of Taxation once issued by the taxing officer is final unless set aside or altered by the court. The court may also make an order that judgment be entered in terms of the amount in the certificate of costs.

11. I have noted from the record that the taxation was on 13<sup>th</sup> November, 2020 and the same has not been challenged in any way by the Respondent. This is notwithstanding the fact that the Respondent was served with the Certificate of Taxation and a reminder to settle the same.

12. That Certificate of Taxation having been issued and not challenged, the amount entered by the taxing officer is due to the Applicant.

13. In the circumstances, the Application dated 5<sup>th</sup> October, 2021 is hereby allowed as follows;

**a) Judgment is hereby entered against the Respondent in favour of the Applicant for the sum of Kshs. 188,857.56 as per the Certificate of Taxation issued on 21<sup>st</sup> July, 2021;**

**b) Interest at court rates from 29<sup>th</sup> September, 2020 which is the date the Respondent was served with the Bill of Costs, till payment in full;**

**c) A Decree to issue pursuant to (a); and**

**d) Costs of the Application to the Applicant.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY, 2022.**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

Ms. Cheronon for the Applicant

No appearance by the Respondent

Court Assistant Barille Sora

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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.

**STELLA RUTTO**

**JUDGE**