



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION NO. 26 OF 2021

(Before Hon. Justice Dr. Jacob Gakeri)

IN THE MATTER OF THE ADVOCATES ACT (CAP 10) LAWS OF KENYA)

AND

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER OF THE ADVOCATES-CLIENT BILL OF COSTS

BETWEEN

ANDREW AND STEVE ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

MAUREEN ONSONGO.....RESPONDENT/CLIENT

RULING

1. By a notice of motion dated 12th October 2021 pursuant to Sections 1A, 1B, 31, Law of Kenya, Section 51(2) of the Advocates, Act, CAP 16 Laws of Kenya, Order 51 Rule 1 of the of the Civil Procedures Rules and all other enabling provisions of law. The Applicant/Advocate sought the following orders –

(1) *THAT the Judgment be entered against the Respondent/Client herein in the sum of Kshs.425,762/- in terms of the Certificate of Taxation dated 10th September 2021 with interest thereon at Court rate of 14% per annum from the date of Taxation until payment in full.*

(2) *THAT the Certificate of Taxation dated 10th September 2021 be adopted as a Decree of the Court and the Advocate/Applicant be at liberty to execute.*

(3) *THAT the costs of this Application be provided for.*

2. The application is based on grounds that

a)... *THAT the Applicant/Advocate filed an Advocate-Client Bill of Costs dated 25th September 2020 (hereinafter called "Bill of Costs") on even date arising from ELRC NO. 189 OF 2020: MAUREEN ONSONGO VS EOH LIMITED-AN EOHZ COPY CAT LIMITED COMPANY.*

b)... *THAT the Bill of Costs was however inadvertently filed before the High Court Commercial Division and registered as HC. MISCELLANEOUS APPLICATION NO. E1097 OF 2020*

c)... *THAT when the matter came up for taxation on 12th November 2020, the Court ordered that the Bill of Cost be transferred to the Employment and Labour Relations Court (ELRC) where the main file ELRC NO. 189 OF 2020 was filed. Consequently, the matter was transferred to ELRC and registered as ELRC MISCELLANEOUS APPLICATION NO. 26 OF 2021.*

d)... THAT on 13th July 2021, the Taxing Master delivered her ruling wherein she taxed the Bill of Costs at Kshs.425,762/- only.

e)... THAT the Respondent has not filed any Objection to the decision of the Taxing Master and therefore it is presumed that they have accepted the decision.

f)... THAT the Certificate of Taxation dated 10th September 2021 was thereafter issued and the same was served on the Respondent/Client on 13th September 2021.

g)... THAT a demand has since been made to the Respondent/Client and she has ignored, neglected and/or refused to settle the taxed amount.

h)... THAT the Certificate of Taxation dated 10th September 2021 has not been set aside or altered by the Court.

i)... THAT it is necessary and in the interest of justice that the Court enters Judgment for the sum, certified to be due together with interests and costs as prayed herein

3. The application is supported by an affidavit sworn by PHOEBE MWANIKI who depones that she has conducted the matter on behalf of the Applicant/Advocate. That the Respondent/Client herein instructed the Applicant to represent her in ELRC NO. 189 OF 2019: MAUREEN ONSONGO V EOH LIMITED/COPY CAT LIMITED and on 25th September 2020 the Applicant filed an Advocate-Client Bill of Costs dated 25th September 2020 seeking Kshs.420,762.28.

4. That the Bill of Costs was mistakenly fixed before the High Court and registered as MISC APPLICATION NO. E1097 OF 2020 but later transferred to the Employment and Labour Relations Court where the main file (ELRC NO. 1890 OF 2020 was filed) and registered as ELRC MISC. APPLICATION NO. 26 OF 2021.

5. That by 23rd April 2021, the date for taxation, the Respondent had not responded and he prayed that the bill be taxed as drawn and a ruling was reserved on 11th May 2021. The Respondent's Counsel objected and sought leave to respond to the Bill of Costs and the matter was to be disposed of by way of written submissions.

6. That subsequently, the Respondent's Counsel by letter dated 26th April 2021 stated that he had not been served with the Bill of Costs in ELRC MISC. APPLICATION NO. 26 OF 2021 but the Applicant/Advocates clarified that ELRC NO. 189 OF 2020 and ELRC MISC. APPLICATION NO. 26 OF 2020 referred to the same Bill of Costs.

7. That on 11th May 2021, the taxing master did not have the physical file and consequently granted a further mention on 25th May 2021 and leave given to the Respondent to file submissions in opposition to the Bill of Costs. The Respondent's Counsel served an affidavit in objection and submissions on 25th May 2021.

8. In light of the late service of submissions by the Respondent, the Court fixed the matter for mention on 17th June 2021 when the filing of submissions was confirmed and ruling reserved for 6th July 2021, but was not ready and was delivered on 13th July 2021 and taxed the Bill of Costs to Kshs.425,762/- only and issued a certificate of taxation dated 10th September 2021.

9. That by letter dated 13th September 2021, the Applicant/Advocate demanded settlement of the taxed sum but no response was forthcoming.

10. That since the certificate of taxation has not been set aside or altered by the Court and is therefore final and certified as due and no reference or objection to the decision of the taxing master has been filed, the Applicant/Advocate wishes to proceed and release the costs taxed by way of execution.

11. That it was only just and fair that the orders sought be granted.

12. It is apparent from the affidavit that the Respondent has neither filed a reference nor objected to the taxing master's decision as of the date of the affidavit.

13. The singular issue for determination is whether the application is merited. The principles of law applicable in relation to Advocate-Client Bill of Costs after the same has been taxed are clear.

14. Section 51(2) of the Advocates Act provides that:

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.

15. In the words of Kamau J. in **Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR**

“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 ...”

16. See also **Miscellaneous Civil Application 487 of 2012 – E. W. Njeru & Co v Zakhem Construction (K) Limited.**

17. On interest chargeable by an advocate, Rule 7 of the Advocates Remuneration Order states as follows: -

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

18. The interest is different from the interest awarded by the Court.

19. It is evident that Section 51(2) of the Advocates Act confer upon the court jurisdiction to make such order as it may deem fit in the matter before it and an order that judgment be entered for the sum certified to be due including costs.

Conclusion

20. In light of the foregoing, the Court satisfied that the Applicant/Advocate has established that the notice of motion dated 12th October 2021 is merited and is hereby allowed in terms of prayer no. (1) and no. (2) therein.

21. There shall be no orders as to costs.

22. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24TH DAY OF FEBRUARY 2022

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