



**Lubulellah & Associates v St Bakhita Daycare and Kindergarten Limited (Miscellaneous Civil Application E044 of 2021) [2023] KEELC 245 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 245 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS CIVIL APPLICATION E044 OF 2021  
MD MWANGI, J  
JANUARY 26, 2023**

**BETWEEN**

**LUBULELLAH & ASSOCIATES ..... APPLICANT**

**AND**

**ST BAKHITA DAYCARE AND KINDERGARTEN LIMITED ..... RESPONDENT**

*(In respect of the Notice of Motion application dated 19th July 2022)*

**RULING**

1. This matter arises out of the taxation of an advocate client bill of costs dated March 15, 2021. The said bill was taxed on October 5, 2021 *vide* a ruling delivered on the same date by the taxing officer.
2. Upon taxation, the client filed a notice of motion application dated November 11, 2021 seeking *inter alia* for an order directing the advocate to deliver an account of all the monies received from the client and a finding that the client has settled all the monies due and owing to the advocate. The application was considered and a ruling delivered on May 26, 2022 dismissing it with costs.
3. A certificate of costs was issued on July 7, 2022 certifying the taxed costs at Kshs 659,179.48/=
4. Pursuant to the provisions of section 51 of the *Advocates Act*, cap 16 of the Laws of Kenya, the advocate has filed the instant applicant praying for entry of judgment against the client/respondent for the sum of Kshs 659,179.48 as per the certificate of taxation. The advocate further prays for interest at the rate of 14% per annum from February 4, 2021 until payment in full. The date of February 4, 2021 is the date of service of the bill of costs upon the client as deposed by the advocate in his supporting affidavit sworn on July 19, 2022.
5. The application is opposed by the client/respondent by way of a replying affidavit sworn by one Felista Muthoki Mutinda, a director of the respondent company. The deponent repeats the same averments made in the application dated November 11, 2021 which this court has already determined.



6. The deponent deposes that the deputy registrar who was the taxing officer directed that in the event of an overpayment, the client be refunded any money paid over and above what was due to the advocate. She states that despite writing to the advocate, there has been no attempt at reconciliation as directed by the taxing officer.
7. Interestingly, the deponent at paragraph 10 of her affidavit deposes that the certificate of costs issued to the advocate is not final as the same was subject to an exercise of reconciliation as directed by the deputy registrar.

#### **Court's Directions.**

8. The court's directions in this matter were that the application be canvassed by way of written submissions. Both parties complied and filed their respective submissions which the court has had the opportunity to read.

#### **Issues for Determination.**

9. Having considered the notice of motion application, the response by the client as well as the submissions filed by the parties, the court is of the view that the issues for determination in this matter are: -
  - a. Whether the advocate is entitled to an order of entry of judgment after taxation and issuance of a certificate of taxation.
  - b. Whether interest should be applied at the rate of 14% per annum on the taxed costs from the date of service of the bill of costs.
  - c. Whether the advocate should have the costs of this application.

#### **Analysis and Determination**

##### **A. Whether the advocate is entitled to an order of entry of judgment after taxation and issuance of a certificate of taxation.**

10. What is before this court is an application for entry of judgment after the taxation of an advocate - client bill of costs and issuance of a certificate of taxation; not a reference.
11. It is not in dispute that the advocate's bill of costs, the subject matter of this application, was taxed on 5th October, 2021, at Kshs 659,179.48/=. A certificate of costs was subsequently issued on July 7, 2022. The taxation has not been challenged by the client in accordance with the provisions of rule 11 of the *Advocates Remuneration Order*.
12. Section 51(2) of the *Advocates Act* provides that the certificate of taxation of the taxing officer unless set aside or altered by the court is final in regard to the amount of costs covered therein.
13. The issues that the client now raises in the replying affidavit are issues that this court has already dealt with *vide* its ruling of May 26, 2022.
14. There are numerous authorities on matters advocate - clients' bills of costs. In the case of *Kenya Commercial Bank Ltd v Kinagop Reliance Co Ltd & Another (2011) eKLR*, the court affirmed the position that a certificate of taxation is deemed final. It is the last and final step designating the amount of costs recoverable by the advocate.
15. It was the same position in the case of *Lubulellah & Associates Advocates v N K Brothers Ltd (2014) eKLR*. In the said case, the court held that the law is clear that once a taxing master has taxed the 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 judgement.

16. Accordingly, the court finds that since the certificate of taxation issued in this matter has not been challenged as provided for under the *Advocates Remuneration Order*, the court has no option but to enter judgment in favour of the advocate for the sum of Kshs 659,179.48/= as prayed.

**B. Whether interest should be applied at the rate of 14% per annum on the taxed costs from the date of service of the bill of costs.**

17. On the aspect of interest, I will rely on this court's finding in the case of *P I Samba and Company Advocates v Buzeki Enterprises Limited [2022] eKLR* where the court cited the Court of Appeal decision in the case of *Otieno Ragot & Co Advocates v Kenya Airports Authority (2021) eKLR*, in which the court stated that: -

“The rule (rule 7) deals with interest chargeable by an advocate in respect of its claim for disbursement and costs following submissions of a fee note. It is patently clear from the rule that interest begins to accrue from the expiry of one (1) month from the date of delivery of the bill or fee note. The learned judge's reasoning that the rule does not specify the date from which time begins to run was therefore a misdirection.....

..... Additionally, it is distinctive that a review of the applicant's bill of costs does not disclose that the applicant included a charge for ‘...interest at 14% per annum on his (her) disbursements and costs...’ in the bill of costs. As the sole basis upon which computations of amounts due to an applicant are determined by the taxing officer, the element of interest defined by rule 7 ought to have been included in the bill of costs, but it was not. This omission would thereby negate the application of rule 7, and instead render the bill liable to an exercise by the court of its discretion under section 26 of the *Civil Procedure Act*.”

18. I have looked at the bill of costs that was drawn, filed and presented by the advocate/applicant in this matter. The advocate did not include a charge of interest at 14% per annum which he now claims in this application. Guided by the above cited binding authority, rule 7 cannot therefore apply in this case. I am therefore only then left with the provisions of section 26 of the *Civil Procedure Act* to guide me on the the aspect of interest.
19. Exercising this court's discretion under section 26 of the *Civil Procedure Act*, the court awards the advocate/applicant interest at the rate of 14% per annum but from the date of taxation of the bill of costs being the October 5, 2021 until payment in full. I pick on the date of taxation because the client having participated in the taxation proceedings ought to have known the outcome of the taxation and made arrangements to make payments forthwith.
20. Accordingly, judgment is entered in favour of the advocate/applicant for the sum of Kshs 659,179.48/= with interest at 14% per annum from the October 5, 2021 until payment in full.

**C. Whether the Advocate should have the costs of this application.**

21. Costs shall follow the cause. Accordingly, the advocate/applicant is awarded the costs of the application.

**Conclusion**

22. In conclusion, the court makes the following orders: -



- a. Judgment is entered in favour of the advocate/applicant against the client for the sum of Kshs 659,179.48/=with interest at 14% per annum from the October 5, 2021 until payment in full.
- b. The advocate shall have the costs of the application.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY 2023.**

**M D MWANGI**

**JUDGE**

In the virtual presence of:

Mr E Lubulellah for the advocate/applicant.

Ms Masengeli h/b for Ms Ngeresa for the client/respondent.

Court Assistant – Yvette.

**M D MWANGI**

**JUDGE**

