



**Chrisitne Oraro & Company Advocates v Maendeleo ya Wanawake (Miscellaneous Civil Application 616 of 2016) [2024] KEHC 558 (KLR) (Civ) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION 616 OF 2016  
DAS MAJANJA, J  
JANUARY 31, 2024**

**BETWEEN**

**CHRISITNE ORARO & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**MAENDELEO YA WANAWAKE ..... RESPONDENT**

**RULING**

1. By a Certificate of Taxation dated 09.07.2019, the Deputy Registrar certified the sum of Kshs. 189,228.00 as due and payable to the Advocates after taxing the Advocates' Bill of Costs dated 28.10.2018 in a ruling delivered on 23.05.2019. The Advocates now seeks judgment for the certified costs by way of the Notice of Motion dated 21.07.2022 made under section 51(2) of the *Advocates Act* (Chapter 16 of the Laws of Kenya) and Paragraph 7 of the Advocates Remuneration Order ("the Order"). It is supported by the affidavits of Christine Adhiambo Oraro, an advocate in the Advocates' firm sworn on 21.07.2022 and 07.07.2023. The application is opposed by the Client through the replying affidavit of its Executive Officer, Isabell M. Ndolo sworn on 24.05.2023. The parties have also filed written submissions in support of their respective positions.
2. The Advocates urge the court to enter judgment for Kshs. 189,228.00 under section 51(2) of the *Advocates Act* as the Certificate of Taxation had not been altered, varied or set-aside, the retainer is not in dispute and that no appeal has been filed against the ruling on taxation. On its part, the Client states that on 12.02.2019, it received from its advocates a letter in which they advised it to pay Kshs 55,375.00 as the Final Fee Note for services rendered. That upon receipt of the letter, on 24.10.2019, the Client settled the said Final Fee Note vide Cheque No. 106728 for Kshs. 55,375.00 and a month later on 28.11.2019, the Advocates wrote a letter to the Client acknowledging the payment as part of the fees and in which the Client was also being informed on the issue of taxation. On 02.12.2019, the Client's advocates on record requested the Advocates to confirm that the matter be marked as settled.



3. According to the Client, the Final Fee Note having been settled prior to filing of this application, was in full and final settlement. That Advocates by filing the application for judgment seek to circumvent the agreed and settled fees. It urges that since the settlement of the Advocates Final Fee Note constituted an agreement on fees under section 45 of the Advocates Act hence the court could not tax the Bill of Costs.

### **Analysis and Determination**

4. The issue for determination is whether judgment the court should enter judgment for the Advocates and against the Client for the amount certified by the Deputy Registrar. Section 51(2) of the Advocates Act provides that:

The certificate of the taxing officer by whom a 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.

5. The Certificate of Costs is conclusive as to the amount unless set aside by way of a reference under Paragraph 11 of the Order. The Court of Appeal in Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021]eKLR held that a bill of costs, having already undergone the scrutiny of a taxing officer who had exercised discretion to arrive at a determination of the just fees, the issue of the quantum of the advocates' fees was effectively disposed of at that time. As such, that decision was final and binding on the concerned parties. It was therefore not a matter that was capable of being reopened by another taxing court. The alteration or setting aside of a bill of costs has to be done through a reference brought under Paragraph 11 of the Advocates Remuneration Order. The appellate court agreed with this court's decision in Lubullellah & Associates Advocates v N K Brothers Limited [2014] eKLR where it was held 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... [Emphasis mine]

6. I am constrained to agree with the Advocates that since the Client has not filed a reference or the certificate of costs set aside or altered, there is no reason stopping the court from entering judgment as prayed for by the Advocates. The arguments raised by the Client ought to have been raised during the taxation and if the Client was dissatisfied, then the same ought to have been further raised with the court through a reference, which was not done, even though the Client had proper notice of the taxation. I therefore enter judgment in accordance with the Certificate of Taxation.

7. On the issue of interest, Paragraph 7 of the Order provides as follows:

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.

8. In order to benefit from the higher rate of interest, the Advocate must indicate its intention to charge such interest prior to the amount being paid or tendered in full. I have considered the parties' depositions and I do not find any notice to the Respondent that the Advocates intended to charge interest at the enhanced rate. I therefore award interest from the date of the taxation until payment in full.



**Disposition**

9. For the reasons I have outline above, I allow the Advocates' Notice of Motion dated 21.07.2022 with effect that judgment be and is hereby entered in the Advocates' favour against the Client for Kshs. 189,228.00 with interest thereon at a rate of 12% from 23.05.2019 until payment in full. The Client shall pay costs of the application assessed at Kshs. 10,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**D. S. MAJANJA**

**JUDGE**

**Court Assistant: Mr M. Onyango**

**Instructed by Christine Oraro and Company Advocates for the Applicant.**

**Instructed by Kirwa Koskei and Company Advocates for the Respondent.**

