



REPUBLIC OF KENYA



Humphrey and Company LLP v Paleah Stores Limited (Miscellaneous Application E802 of 2021) [2024] KEHC 4167 (KLR) (Commercial and Tax) (30 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4167 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

MISCELLANEOUS APPLICATION E802 OF 2021

A MABEYA, J

APRIL 30, 2024

BETWEEN

HUMPHREY AND COMPANY LLP APPLICANT

AND

PALEAH STORES LIMITED RESPONDENT

RULING

1. This ruling disposes the application dated 18/10/2023. The same was brought under section 1(a)(b) and 3A of the *Civil Procedure Act*, Order 51 rule 1 of the *Civil Procedure rules*, section 51(2) of the *Advocates Act* (CAP 16), Order 7 of the *Advocates Remuneration Order* (under section 48) CAP 16.
2. The applicant has moved the court seeking to have judgment entered and a decree be issued in terms of the Certificate of Taxation dated 24/3/2022 for Kshs 242, 179,864.02.
3. The application was supported by the grounds set out on the face of it and by the supporting affidavit sworn by Eddie Omondi on 18/10/2023. The applicant's case was that it filed a bill of costs dated 27/10/2021 which was taxed at Kshs. 242,179,864.02 and a Certificate of Taxation was issued in respect thereof on 24/3/2022. That the respondent had failed to settle the amount for over two years and therefore prayed for judgment as the liquidity of the respondent was at stake.
4. In purported opposition, the respondent filed a replying affidavit dated 30/10/2023 sworn by Silas Chambuni. I note that the said replying affidavit is not related to this matter as it is for the Chief Magistrates Court in the case of *Silas Chambuni v Geminia Insurance Company Limited*. these parties are different from the parties before the court in this suit.
5. The application was canvassed by way of written submissions which I have duly considered. The respondent did not file any submissions.



6. The applicant submitted that the application before Court was a procedural step to turn the certificate of costs into a judgment and decree. That the certificate of costs unless set aside was final as to the amounts of costs certified. It was contended that the applicant did not give an undertaking to not execute the certificate of costs.
7. I have considered the pleadings and the submissions on record. The main issue is whether judgment should be entered as per the Certificate of Taxation dated 24/3/2022.
8. Section 51(2) of the *Advocates Act* provides for entry of judgment on taxed costs as follows: -

“The certificate of a taxing officer by whom it 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.”
9. The applicant filed a bill of costs dated 27/10/2021 before the taxing master of this Court and the same was taxed against the respondent for Kshs 242,179,864.02 and a Certificate of Taxation was issued on 24/3/2022 for the said amount. There is no evidence on record that the said amount was paid by the respondent. Further, there is no evidence that the said Certificate has been set aside or varied.
10. In *Lubullellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR, the Court observed 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. An applicant is not required to file suit for the recovery of costs.
11. From the foregoing, the Court has the jurisdiction to enter judgment on Certificate of Taxation when the retainer is not disputed and when there is no reference. That being the case and in view of the fact that the Certificate of Taxation herein has not been varied or set aside, I find that the application is merited.
12. Accordingly, I order that Judgment be entered in favour of the Advocate/Applicant in terms of the Certificate of Taxation dated 24/3/2022 together with interest thereon at 14% per annum, from the expiration of 30 days from the date hereof.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2024.

A. MABEYA, FCI Arb

JUDGE

