



**Muthomi & Karanja Advocates v Nairobi City County Assembly
(Miscellaneous Civil Application E013 of 2021) [2024] KEHC 7817 (KLR)
(Constitutional and Human Rights) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
MISCELLANEOUS CIVIL APPLICATION E013 OF 2021**

EC MWITA, J

JUNE 28, 2024

BETWEEN

MUTHOMI & KARANJA ADVOCATES ADVOCATE

AND

THE NAIROBI CITY COUNTY ASSEMBLY CLIENT

RULING

Background

1. The applicant, (the Advocate), filed advocate-client Bill of costs dated 27th May 2021 against the respondent, (the client), for the sum of Kshs 9,206,814.40 for professional work done. The Bill of costs was taxed and allowed in the sum of Kshs. 502, 249. 80 in the ruling dated 22nd March 2022.
2. The Advocate filed a reference dated 31st March 2022 challenging the taxing officer's decision. In a ruling dated 30th June 2023, this court, (M Thande J), allowed the reference, set aside the taxing officer's decision of 22nd March 2022 in respect of items 1 and 2. In placed thereof, the learned Judge allowed item 1 on instruction fee at Kshs. 600,000 and item 2, getting up fee at Kshs. 200,000. The court awarded costs of the application to the advocate.
3. The taxing officer then issued a certificate of taxation dated 1st November 2023 for Kshs. 1,168,916.80.

Application

4. On 8th November 2023, the Advocate took out a motion application under section 51 of the *Advocates Act*, seeking judgment for Kshs 1,168,916.80 against the client together with interest at 14% per annum from 17th May 2021 until payment in full, plus costs of the application.



5. The advocate stated that the client had failed to settle the taxed and certified costs, and there being no stay or challenge to the taxed costs and the certificate of taxation having not been set aside, varied and/or reviewed, the court should enter judgment for the amount in the certificate of taxation. According to the applicant, the amount in the Certificate of Taxation of Kshs. 1,168,916.80 is inclusive of disbursements.

Response

6. The client opposed the application through a replying affidavit sworn by Edward Gichana (Mr. Gichana). Mr. Gichana deposed that the amount in the Certificate of Taxation is fictitious and unsubstantiated. He argued that in the ruling delivered on 30th June 2023, the amount allowed on instruction fee was Kshs. 600,000 and getting up fee at Kshs. 200,000, making a total of Kshs. 800,000, and that is the amount the client is willing to settle.
7. Counsel for the parties made oral arguments reiterating their respective positions in the application and response. Mr. Karanja appearing for the advocate, urged the court to allow the application as prayed, since the certificate of taxation had not been set aside or varied.
8. Mr. Mulaku, counsel for the client, admitted that there was no challenge to the certificate of taxation and that the certificate of taxation had not been set aside or varied. He, however, urged for the dismissal of the application, and asked the court to consider the amount in the ruling of the taxing officer.

Determination

9. I have considered the application and response thereto and perused the record. As pointed to at the beginning of this ruling, the taxing officer's decision dated 22nd March 2022 was set aside by this court (Thande j) on 30th June 2023. The court taxed the item I on instruction fee at Kshs. 600,000 and getting up fee at Kshs. 200,000, making a total of Kshs. 800,000. The Taxing officer then issued a Certificate of Taxation on 1st November 2023, for Kshs. 1,168,916.80 pursuant to that ruling.
10. . The advocate has applied for entry of judgment in terms of the certificate of Taxation in the sum of Kshs. 1,168,916.80, which the client opposes, arguing that the amount in the certificate of taxation is fictitious and unsubstantiated.
11. I have perused the ruling dated 30th June 2023 on the reference. The ruling was on items 1 and 2, instruction fee and getting up fee respectively. These items were allowed at Kshs 600,000 and 200,000 respectively making a total of Kshs. 800,000.
12. The taxing officer's ruling was for Kshs. 502, 249.80. Instruction fee, (item 1) had been allowed at Kshs. 100,000 while getting up fee (item 2) had been allowed at Kshs. 33,333, being one half of instruction fee. The other items in the bill of costs were taxed and allowed at Kshs. 368,916.80. When this amount is added to Kshs. 800,000 allowed following the reference, the total amount allowed adds to Kshs. 1,168,916.80 which is the amount in the Certificate of Taxation.
13. Section 51(2) of the *Advocates Act* states 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.



14. Counsel for the advocate asserted that the certificate of taxation had not been challenged or set aside, a fact the counsel for the client confirmed. In that respect, the certificate of taxation is final as to the amount certified as due.
15. The advocate has also prayed for interest at 14% per annum from 17th May 2021 until payment in full. The law is that the advocate is entitled to interest, thirty days after the bill is served on the client for payment but payment is not made.
16. Rule 7 of the *Advocates Remuneration Order* provides:

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, provided such a claim for interest is raised before the amount of the bill has been paid or tendered in full.” 5.20 Dec 2021”
17. In this respect, the bill is determined for payment after taxation when the amount to be paid is ascertained. The ruling on the reference was delivered on 30th June 2023. It was then that the amount due was ascertained and became payable and the client became aware of the “Bill” on the date when the ruling on Taxation was delivered. (See *Amondi & Co Advocates v County Government of Kisumu* [2021] eKLR.)
18. Where the taxed and ascertained costs are not paid, the advocate is entitled to 14% interest, thirty days from the date the bill was served. In this case, the interest became payable 30 days after the final determination of the bill of costs on 30th June 2023.
19. Consequently, and for the reasons stated above, the application is allowed. Judgment is hereby entered for the advocate against the client for Kshs. 1,168,916.80, with interest at 14% per annum from 1st August 2023, until payment in full. The advocate shall also have costs of the application.

Dated Signed and Delivered at Nairobi this 28th Day of June 2024

E C MWITA

JUDGE

