



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL DIVISION**

**MISC. CIVIL APPLICATION NO. 493 OF 2018**

**DENNIS K. MAGARE & BEN MUSUNDI P/A MAGARE**

**MUSUNDI & CO. ADVOCATES..... APPLICANT**

**VERSUS**

**KEWAL CONTRACTORS LIMITED.....RESPONDENT**

**RULING**

1. Before the Court is the motion dated 2<sup>nd</sup> December, 2020 by **Magare Musundi & Co. Advocates** (hereafter the Applicant) and expressed to be brought under the provisions of Section 51(2) of the Advocates Act, Section 1A & 1B of the Civil Procedure Act and Order 11 Rule 3 & Order 51 Rule 1 of the Civil Procedure Rules among others. The motion seeks that judgment be entered against **Kewal Contractors Limited** (hereafter the Respondent) for the Advocate/Client bill of costs taxed in the sum of Kshs. 177,062/= as contained in the certificate of taxation dated 1<sup>st</sup> December 2020 with interest on the taxed sum to be assessed by the court.

2. The motion is based on the grounds on the face thereof and the affidavit of **Ben Musundi** counsel, who deposes that he is seized of the subject matter. The gist of the supporting affidavit is that Respondent instructed the Applicant to act for it and thereafter neglected and or refused to settle its legal fees. That the Applicant subsequently filed an Advocate-Client bill of costs that was taxed and a certificate of taxation for the taxed sum of Kshs. 117,062/= issued on 1<sup>st</sup> December 2020. It is further deposed that the Respondent has refused and or neglected to pay costs as taxed and the Applicant cannot proceed to execute for fees unless the certificate of costs is converted into a decree or judgment of the court.

3. On 18<sup>th</sup> January 2021 the court issued directions on the hearing of the motion. The Respondent did not file a response despite being accorded the opportunity to do so. On its part, the Applicant subsequently complied by proceeding to file submissions as directed; the Respondent did not file any submissions despite its counsel having pledged to do soon 1<sup>st</sup> July 2021 when the matter was last before the Court.

4. The Applicant has submitted that the prior to and antecedent to issuance of the certificate of taxation the Respondent has failed to settle the taxed cost; that by the said conduct, the Respondent is engaging in dilatory tactics; and citing the provisions of Article 159 (2) (b) & (d) asserted that it is imperative for judgment to be entered in order to bring the matter to a conclusion.

5. The court has considered the affidavit material and submissions by the Applicant. It is an undisputed that following taxation of

the Advocate/Client Bill of costs a certificate of taxation of costs was already issued in favour of the Applicant. No reference or other challenge to the taxation has been filed by the Respondent as provided for under Rule 11 of the Advocates Remuneration Order. Nor has the Respondent filed any response or submissions in opposition to the instant motion. In the meantime, the taxed sums remain unpaid. Section 51(2) of the Advocate Act provides as follows:

**“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”.**

6. The bill of costs was taxed *ex parte* and was therefore unopposed. In the result, counsel is entitled to compensation for work done. He has thus properly availed himself of the provisions of Section 51(2) of the Advocates Act. Proceedings brought under the provisions of Section 51(2) of the Advocates Act and 51 Rule 1 of the Civil Procedure Rules enhance expediency in the resolution of claims arising from advocate-client relationships. In **Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR Murgor JA**, cited with approval the decision in **Lubulellah & Associates Advocates V N.K. Brothers Limited [2014] eKLR** where the court 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. An applicant is not required to file suit for the recovery of costs.”**

7. In the circumstances, the Advocate is entitled to judgment and interest pursuant to Rule 7 of the Advocates Remuneration Order which provides that:

**“An advocate may charge interest at 14 per cent 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 that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full”**

8. The motion dated 2<sup>nd</sup> December 2020 is hereby allowed with costs and interest in accordance with Rule 7 of the Advocates Remuneration Order.

**DELIVERED AND SIGNED ELECTRONICALLY ON THIS 2<sup>ND</sup> DAY OF DECEMBER, 2021**

**C.MEOLI**

**JUDGE**

**In the presence of:**

**For the Applicant: Ms. Njogu h/b for Mr Musili**

**For the Respondent: Ms Nasambu h/b for Mr Macharia**

**C/A: Carol**