



**Kenyariri & Associates Advocates v Kenyariri (Miscellaneous Case E002 of 2021)
[2023] KEHC 936 (KLR) (Commercial and Tax) (17 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CASE E002 OF 2021
A MABEYA, J
FEBRUARY 17, 2023**

BETWEEN

KENYARIRI & ASSOCIATES ADVOCATES ADVOCATE

AND

JAMES BICHAGE KENYARIRI CLIENT

RULING

1. On June 17, 2022, the applicant moved the court for judgment on a certificate of costs dated June 13, 2022. That motion was opposed by the respondent *vide* his replying affidavit of October 24, 2022.
2. In that replying affidavit, the respondent swore interalia as follows:-
 - “2. That I have read the application dated June 17, 2022 together with supporting affidavit and I have fully understood the meaning and the import of the same and I wish to apply as follows;
 3. That it is within my knowledge that I lodged an appeal against the taxation which was done without my knowledge on the May 25, 2022 and the court had indicated to me that the ruling was supposed to be delivered on May 9, 2022.
 4. That on May 25, 2022 I put in an application for typed proceedings of the taxation proceedings which were made available to me on September 23, 2022 which enabled me to put a memorandum of appeal dated October 4, 2022 and application to review, vary/set aside the taxation in HCCOMMISC E 763/2022 which was heard by this honourable court on October 24, 2022 and listed for hearing on the December 8, 2022 before your lordships. The



application is merited and has high chances of success. The record of appeal is yet to be served on the advocate.”

3. In the ruling made on January 13, 2023, I declined to allow the application to enable me peruse the original file for HCMisc No E 763 of 2021. This was because, there was no evidence that was produced to show that such a case existed and if it did, the nature thereof. The respondent being a lay person, I gave him the benefit of doubt.
4. I have since called for and perused the entire file of HCMisc No E. 763 of 2021. The parties thereof are Mugendi Karigi & Co Advocates v Doric Industries Ltd. It relates to a bill of costs dated October 8, 2021 between the said parties. The certificate of costs therein is for Kshs 149,104/43 and is dated February 4, 2022.
5. In view of the foregoing, the reference in the case relied on by the respondent is completely different from the bill of costs from which the certificate of costs before me relate. The parties are completely different.
6. Accordingly, I hold that there is no reference that is pending against the certificate of costs dated June 13, 2022. That certificate not having been set aside or varied. The application dated June 17, 2022 is hereby allowed as prayed. The applicant will also have the costs of the application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF FEBRUARY, 2023.

A. MABEYA, FCIArb

JUDGE

