



**W. G. Wambugu & Co. Advocates v Damon (Miscellaneous Civil Application 202 of 2019)  
[2022] KEHC 113 (KLR) (Commercial and Tax) (18 February 2022) (Ruling)**

Neutral citation: [2022] KEHC 113 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION 202 OF 2019**

**A MSHILA, J**

**FEBRUARY 18, 2022**

**BETWEEN**

**W. G. WAMBUGU & CO. ADVOCATES ..... APPLICANT**

**AND**

**JACQUELINE DAMON ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion Application dated 21<sup>st</sup> July 2021 under Section 45(1) of the *Advocates Act* and Order 51 of the *Civil Procedure Rules*, for the orders that;
  - a. Judgment be entered for the applicant in the sum of Kshs.623, 624.70 being the taxed costs.
  - b. The Court grants any further orders as it may deem fit to grant.
2. The application is premised on the grounds on the face of the application and on the Supporting Affidavit made on the same date by WANJA WAMBUGU who deponed that the respondent instructed the applicant to act for her in HCCC No.70 of 2018 where the respondent was the plaintiff.
3. Further, the respondent withdrew instructions from the applicant necessitating the filing of the Advocate-Client Bill of Costs on 23<sup>rd</sup> July 2020. On 18<sup>th</sup> February 2021 the Bill of Costs was taxed and allowed in the sum of Kshs.623, 624.70.
4. The applicant states that demand has been made but the respondent neglected, failed and/or has declined to make good the demand.

**ISSUES FOR DETERMINATION**

5. After reading the Supporting Affidavit filed herein this court finds only one issue for determination which is;



- a. Whether the conditions of Section 51(2) of the Advocates Act have been satisfied;

**ANALYSIS**

6. Section 51(2) of the Advocates Act which gives this court the mandate to enter judgment for the costs recovered stipulates 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 recovered thereby; and the court may make such order in relation thereto as it thinks fit, including where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

7. On 14<sup>th</sup> December 2021, in urging the application, the applicant submitted that there is no Appeal and no Application that had been filed by the Respondent to set aside or vary the Certificate of Taxation and therefore prayed for judgment in terms of the Certificate of Taxation.
8. The applicant had filed an Affidavits of Service sworn by WILLIAM MUGO confirming that the respondent had indeed been served with the application and mention notices.
9. On the same date, Mr. Kanyoni who was holding brief for Mr. Muchiri advocate for the respondent informed the court that the application should proceed unopposed as the respondent had not filed any response to the applicant’s application dated 21<sup>st</sup> July 2021; the retainer was also not contested.
10. In *Winfred Nyakundi Konosi t/a Konosi & Co. Advocates V. Invesco Assurance Company Ltd.* (2018) eKLR, the court stated that: -

“Once a certificate of costs is issued and has not been set aside or altered, no other action would be required from the court save to enter judgement upon application”

11. Consequently, the only order which commends itself to this court is to adopt the certificate of taxation as a judgment of this court made in favour of the applicant for the amount of Kshs.623, 624.70.

**FINDINGS AND DETERMINATION**

12. In the light of the foregoing this court makes the following findings and determinations;
- (i) The application is found to be meritorious;
  - (ii) The Certificate of Taxation dated 8<sup>th</sup> February 2021 in the sum of Kshs. 623, 624.70 is hereby adopted as a Judgment of this court.
  - (iii) There shall be no order as to interest and costs.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**HON. A. MSHILA**

**JUDGE**

In the presence of;

Mr. Mugo for the Advocate/Applicant

Mr. Muchiri for the Respondent

