



Jamal Bake & Associates Advocates v Mwinyi & another (Miscellaneous Application E522 of 2021) [2022] KEHC 10213 (KLR) (Commercial and Tax) (24 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E522 OF 2021**

A MSHILA, J

JUNE 24, 2022

BETWEEN

JAMAL BAKE & ASSOCIATES ADVOCATES APPLICANT

AND

RAMADHAN MWAYAYA MWINYI 1ST RESPONDENT

MOHAMED HUSSEIN OMAR 2ND RESPONDENT

RULING

1. The Notice of Motion was brought under Section 51(2) of the *Advocates Act*, Cap 16 Laws of Kenya, Order 51 Rule 1 of the *Civil Procedure Rules* for orders that;
 - a. The Court to adopt the Certificate of Costs issued by the Taxing Officer as a Judgment of the Court.
 - b. Costs of this Application be provided for.
2. The Application was supported by the sworn Affidavit of Jamal Bake who stated that the Applicant herein filed his Bill of Costs dated July 7, 2021 before the Taxing Officer who taxed the said Bill of Costs at Kenya Shillings Eight Hundred and Seventy-Five Thousand. (Kshs. 875,000/-).
3. Thereafter, a Certificate of Costs dated November 23, 2021 was issued to that effect.
4. No appeal or review of the said Certificate of Costs has been preferred and the same has not been set aside.
5. The Application was unopposed and shall be determined as hereunder;



Issues for Determination

6. The Court has considered the Applicant's Application and the issue for determination is;
 - a. Whether the Certificate of Costs issued by the Taxing Officer should be adopted as a Judgment of the Court.

Analysis

7. The Respondent was served with the Advocate-Client Bill of costs and Notice of Taxation but failed to file any response or objection thereto.
8. The Certificate of Taxation has not been set aside, reviewed or varied thus the issue of the advocates cost is conclusive.
9. Section 51 of the *Advocates Act* provides:
 - (2) 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."
10. In the case of *Musyoka & Wambua Advocates vs Rustam Hira Advocate* (2006) eKLR it was held: -

"Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter Judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit....."
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.875, 000/=.

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 in the sum of Kshs. 875,000/= 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 AT NAIROBI THIS 24th DAY OF JUNE, 2022.

HON. A. MSHILA

JUDGE

In the presence of;

Ms. Kemunto for the Advocate

No appearance for the Respondents



Lucy-----Court Assistant

