



Ngaywa Ngigu & Kibet Advocates v Invesco Assurance Company Limited (Miscellaneous Application 201 of 2019) [2022] KEHC 12293 (KLR) (25 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS APPLICATION 201 OF 2019
GWN MACHARIA, J
JULY 25, 2022**

BETWEEN

NGAYWA NGIGU & KIBET ADVOCATES APPLICANT

AND

INVESCO ASSURANCE COMPANY LIMITED RESPONDENT

RULING

The Application

1. The applications for consideration are Applicant's Notice of Motions brought under section 51(2) of the Advocates Remuneration Order. The various applications seek to have judgment entered in favour of the applicant against the respondent for various sums being the certified costs due to the applicant as against the respondent. Further, the applicant seeks costs of the applications together with interests on the taxed sums.
2. The applicant's costs were taxed as follows:
 - i. Miscellaneous application number 201 of 2019 at kshs 171,780.00
 - ii. Miscellaneous application number 79 of 2017 at kshs 73,357.00
 - iii. Miscellaneous application number 68 of 2019 at kshs 71,767.00
3. The sum of the of the foregoing taxed costs being kshs 316,904.00
4. The application is based on the grounds on the face of it and supported by the Affidavit of one Joseph N Ngigi, sworn on diverse dates.



The applicant's case

5. It is the applicant's averment that it filed its advocate/party bills of cost which said bills was eventually taxed by the court on various dates.
6. The applicant provided instructions letters with respect to the various applications in support of the averment that it had been instructed by the respondent to provide representation in various matters upon which the bills emanated.
7. The applicant was subsequently issued with certificates of taxation on diverse dates upon which he prays that the court issues a decree as the respondent has been reluctant to settle the same.
8. As the application and the retainer and/or instructions were uncontested and no appeals had been filed or the certificate of costs set aside the applicant prays that judgment be entered as prayed.
9. The respondent despite being served with the said applications filed no response. Additionally, the certificates of costs arising issued to the applicant are yet to be set aside. The applications are unopposed.

Analysis and determination

10. This honourable court having considered the applications and the respective supporting affidavits is only tasked to determine whether the conditions set out in section 51(2) of the *Advocates Act* have been satisfied. The provision reads 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.”

11. The foregoing provision of the law gives the honourable court jurisdiction to enter judgment in the sums as per the certificates of the taxing officer. No evidence has been placed before the court with respect to the said certificates of taxation being set aside or altered. The court further finds that the said applications are unopposed as despite service being effected, the respondent has neglected to participate in the proceedings.
12. In view of the foregoing, I find that the applicant has satisfied the prerequisites as laid down in section 51(2) of the *Advocates Act* and exercise my jurisdiction to enter judgment in favour of the applicant against the responded to the certified sums. This position was also adopted in the case *KTK Advocates v Baringo County Government* [2018] eKLR where it was held:

“The above section in my understanding, gives the court the jurisdiction to enter judgment for taxed costs where conditions are satisfied. The first condition is that there must be a certificate of the taxing officer by whom the bill has been taxed which certificate has not been set aside or varied by the court. Secondly there must be no dispute as to the retainer. If those two conditions are satisfied, the court has a discretion to enter judgment for the sum certified to be due with costs.

The above position has been upheld in numerous decisions of this among them *E W Njeru & Co Advocates vs Zakhem Construction (K) Limited* [26]a position firmly grounded



on the provisions of section 51 (2) of the Advocates Act[27]which I believe is the correct exposition of the law.

I find, and hold that the above two conditions have been satisfied in this case, hence there is no reason at all for this court to decline the application to enter judgement as prayed.”

Disposition

13. For all the foregoing reasons, I am satisfied that the applicant’s applications are merited and make the following orders –
 - a. That judgment be and is hereby entered in favour of the applicant herein Ngaywa Ngigi & Kibet Advocates against the respondent Invesco Assurance Company Limited in the sum of kshs 316,904.00 plus interests at court rates from the date of taxation.
 - b. That the respondent herein shall bear the costs of the applications the subject of this ruling.
14. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 25TH DAY OF JULY, 2022.

G W NGENYE-MACHARIA

JUDGE

In the presence of:

Mr Kering for the applicants.

No appearance for the respondent.

