



**Wakini Kiarie & Co. Advocates v Denya Orient Insurance  
Co. Ltd (Commercial Miscellaneous Application 563 of 2019)  
[2022] KEHC 16617 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16617 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION 563 OF 2019  
DO CHEPKWONY, J  
NOVEMBER 24, 2022**

**BETWEEN**

**WAKINI KIARIE & CO. ADVOCATES ..... PLAINTIFF**

**AND**

**DENYA ORIENT INSURANCE CO. LTD ..... DEFENDANT**

**RULING**

1. In its notice of motion application dated September 17, 2021, the applicant sought orders that:-
  - a. the honourable court enter judgment/decreed on the certificate of taxation dated August 23, 2021 for Kshs 39,349.00;
  - b. interest be provided at 14% per annum from June 24, 2021 until payment is done in full;
  - c. costs of this application be provided for.
2. The application is supported by the sworn affidavit of Wakini Kiarie dated September 17, 2021 and is premised on the grounds that the respondent never filed a response to the said bill of costs notwithstanding service and neglected or failed to pay legal fees duly earned despite demand and notice by the applicant. The applicant claims that the respondent is facing liquidation and therefore, the recovery of funds is at risk. The applicant urges the court to grant the orders sought failure to which, it stands to suffer gross prejudice as the final liquidity of the respondent is in question. The applicant maintains that it is entitled to the taxed amount hereof.
3. On March 30, 2022, the counsel for the parties agreed to rely on their affidavits as filed and the respondent was granted leave to file a response which it did not.



## Analysis and Determination

4. Having carefully considered the applicant's written submissions, it was clear that the certificate of costs that was issued by the taxing officer had not been set aside and/or altered. Indeed, no reference under paragraph 11 of the advocates remuneration order challenging the decision of the said taxing master. It is also evident that the client was not opposed to the adoption of the taxed costs as a judgment sum since no response has been filed.
5. Section 51(2) of the *Advocates Act* states that:-

(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.

## Conclusion

6. The respondent having failed to file a reference or response to the application dated September 17, 2021, the same is merited and is hereby allowed in the following terms:-
  - a. Judgment be and is hereby entered in favour of the applicant in the sum of Kshs 39,349.00
  - b. Interest on (a) above at 14% per annum calculable at 30 days from the date when the bill of costs was served upon the client.
  - c. Costs of this application be awarded to the advocate.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**D O CHEPKWONY**

**JUDGE**

In the presence of:

Mr Kiplangat counsel for the respondent

No appearance for and by applicant

Court Assistant - Simon

