



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**MISC. CIVIL APPLICATION NO. 29 OF 2020**

**ANNET NYAKURI T/A ANNET MUMALASI & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**KENYA NATIONAL UNION OF TEACHERS (KNUT).....RESPONDENT**

**RULING**

By Notice of Motion dated 2<sup>nd</sup> February, 2021 the Applicant sought to have the Certificate of Costs dated 21<sup>st</sup> January, 2021 adopted, judgement entered against the respondent in the sum of Kshs.403,981.70 and decree issued in terms of the taxed costs for execution purposes.

The application is based on the grounds on the face of the application and supported by the annexed affidavit of the applicant.

The application was unopposed.

The application was canvassed by way of written submissions.

The Applicant filed their written submissions in support of the application. The applicant in her submissions submits that under **Section 51 (2)** of the **Advocates Act** a Certificate of Costs that has not been varied or set aside remains final and the advocate has a right to recover the same from the client concerned. She submits that the Certificate of Costs was issued on 21<sup>st</sup> January, 2021 and the time line for filing an objection has lapsed whereas no objection or reference has been filed. That the Notice of Motion is meant to translate the Certificate of Costs into an instrument capable of execution. She relied in the case of **Nyabena Alfred t/a Nyabena Nyakundi & Company Advocates v Tourism Promotion Limited t/a Serena hotel [2018] eKLR** in support of her submissions.

The Respondent did not file submissions to the application.

I have considered the application and the applicants' submissions on record, the issue to be determined is whether the application is merited.

**Section 51(2)** of the **Advocates Acts** is the applicable provision where costs have been taxed and an applicant wishes to obtain a decree for execution. It stipulates:

**The certificate of a taxing officer by whom it 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.**

From the above provision, it is clear that a party can move the court for judgement to be entered in terms of the taxed costs. A general rule of practice by advocates is to file applications by way of Notice of motion such as the current application moving the court to enter judgment after taxation of their bills of costs and issuance of certificate of taxation. There is no obligation on the part of the advocate who has had his costs taxed by a taxing officer, to file a fresh suit for recovery of the taxed costs and where a certificate of taxation issued. This procedure ensures expedition since the certificate of costs once issued is final as to the amount of the costs covered and what then remains is for the court to pronounce itself, on an application for judgment, where there is no dispute and order that judgment be entered for the sum of as per the certificate of costs.

In the present case the advocate filed a bill of costs dated 1<sup>st</sup> February 2020 against the client and served it upon the client for taxation but the client did not attend the taxation. The Taxing Master Mr. E.N. Mwenda assessed the bill on 17<sup>th</sup> December, 2020 at Kshs. 403,981.70.

The Certificate of Taxation was issued on 21<sup>st</sup> January 2021 but to date no reference was filed by the client challenging the taxation. Clearly, there is no indication that the client is interested in moving the court on a Reference against the Certificate of Taxation.

Therefore, the application by the applicant is merited. The court therefore adopts the Certificate of taxation dated 21<sup>st</sup> January, 2021, enter judgment for the applicant in terms of the Certificate of Taxation and direct that decree be drawn in terms of the taxed costs for executions in the usual manner of an order of the court

The Respondent should bear the costs of the application.

**DATED AND SIGNED AT BUNGOMA THIS 30TH DAY JULY, 2021.**

**S N RIECHI**

**JUDGE**