



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**MISC APPLICATION NO. 417 OF 2012**

**IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER**

**MURIITH KIRERIA & ASSOCIATES, ADVOCATES .....ADVOCATE**

**VERSUS**

**JANE WANJA NJIRU..... CLIENT**

**RULING**

1. The **notice of motion dated 5<sup>th</sup> February 2013** brought under **section 51(2) of the Advocates Act, Cap 16** (the Act) seeks judgment upon a certificate of taxation of costs. The taxation proceeded *ex parte* upon the Client's failure to attend despite notice. The taxation has not been challenged, and the certificate of taxation has not been varied or set aside.
2. The Client has opposed the application by her own **replying affidavit filed on 1<sup>st</sup> March 2013**. She depones that she never instructed the Advocate to act for her and that the brief was passed on to him by her former advocates, **Mathaura Kiome & Company, Advocates** to whom she had paid a total of KShs 1,740,000/00 as their legal fees and costs.
3. The Client has further deponed that the new advocates, **Muriithi Kireria & Associates**, demanded KShs 310,000/00 which she paid. At paragraph 10 she depones –

**“10 ...I do not intend and I have no intention of depriving the Applicant payment of any legal fees, but they had not received any instructions from me to act on my behalf and I have already paid a sum of...KShs 2,050,000/00 which sum would cover the amount the Applicant is praying for...”**

4. By paying the Advocate KShs 310,000/00 the Client acquiesced to the brief of her case being passed over to him by her former advocates. Otherwise she would not have agreed to pay the amount demanded

by the new advocate. She does not complain that the new advocate did not do any work. Her complaint is that she has been asked to pay too much towards advocate's costs. That is an issue of taxation that ought to have been taken up at taxation.

5. I find that there is no dispute as to retainer. As already pointed out the certificate of taxation has not been set aside or varied. There is no reason to deny the Advocate judgment upon his taxed costs.

6. I will therefore allow the application and enter judgment as prayed plus costs. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF JUNE 2013**