



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**MISC. CAUSE NO. 923 OF 2011**

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

**AND**

**IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT**

**KAGWIMI KANG'ETHE & COMPANY ADVOCATES ..... APPLICANT**

**VERSUS**

**PETER MAINA NJOROGE .....RESPONDENT**

**RULING**

The applicant's application dated 9<sup>th</sup> March, 2012 seeks the following orders:

- “1. That judgment be entered against the respondent for the sum of Kshs.1,060,899/= in terms of certificate of taxation dated 29<sup>th</sup> February, 2012 together with interest thereon at court rates until payment in full.**
- 2. That the costs of this application be borne by the respondent.”**

The application was supported by an affidavit sworn by **John Kang'ethe**, an advocate in the applicant firm. He stated that the applicant filed a bill of costs dated 21<sup>st</sup> November, 2011 and served the same upon the respondent. The bill of costs was taxed and allowed on 23<sup>rd</sup> February, 2012 in the sum of Kshs.1,060,899/= by Mrs. Njora, Deputy Registrar. A certificate of costs for the aforesaid sum was subsequently issued on 29<sup>th</sup> February, 2012. The certificate of taxation has not been set aside or altered by the court and is therefore final as to the costs certified to be due to the applicant, counsel stated.

Mr. Kang'ethe added that the issue of retainer is not disputed by the respondent and consequently judgment ought to be entered in terms of certificate of taxation.

The respondent did not file any reply to the said application. When the application came up for hearing on 20<sup>th</sup> April, 2012 **Mr. Nyambati** sought an adjournment to enable his client file an application to challenge the bill of costs, saying that the respondent was not aware of the earlier proceedings.

Mr. Kang'ethe for the applicant opposed the application and said that Mr. Nyambati was instructed in February, 2012 but since then he had not done anything. The respondent had earlier been served with the

application herein.

The court declined to grant an adjournment. In the circumstances, Mr. Nyambati stated that he had nothing to say in respect of the application.

**Section 51 (2) of the Advocates Act** states that:

**“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.”**

The applicant’s bill of costs together with a notice of taxation were served upon the respondent on 29<sup>th</sup> November, 2011. The respondent proceeded to instruct the firm of **Mukua, Nyambati, Mong’are and Associates** to act for him in the matter. The said firm of advocates prepared a notice of appointment of advocates on 6<sup>th</sup> February, 2012 but did not file the same until 5<sup>th</sup> March, 2012. The taxation notice that was served upon the respondent clearly indicated that the bill of costs was fixed for taxation on 15<sup>th</sup> December, 2011.

On the scheduled day of taxation, Mr. Mwaura appeared for the respondent and sought an adjournment. The court granted the application and adjourned the taxation of the bill to 18<sup>th</sup> January, 2012. Come that date there was no appearance for the respondent and the court proceeded to tax the bill in the presence of Mr. Kang’ethe for the applicant. The ruling was delivered on 23<sup>rd</sup> February, 2012. No objection proceedings have been filed since then.

The respondent cannot therefore argue that he was not aware of the proceedings before the Deputy Registrar.

I am satisfied that judgment ought to be entered as prayed by the applicant since there is in existence a certificate of taxation by the taxing officer and the issue of retainer is not in dispute. Consequently, the orders sought by the applicant are granted as prayed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF APRIL, 2012.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Alex – Court Clerk**

**Mr. Kang’ethe for Applicant**

**No appearance for Respondent**