



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc. Application 266 of 2007**

**GITONGA KITHINJI ta/ GITONGA MURIUKI & CO.  
ADVOCATES.....APPLICANT**

**VERSUS**

**WILLIAM MUCHOKI NGOTHI.....RESPONDENT**

**R U L I N G**

1. The instant application dated 18/12/2007 is filed by an advocate under the provisions of section 51(2) of the Advocates Act and Order 50 Rule 1 of the Civil Procedure Rules by which he seeks that Judgment be entered for the applicant as against the respondent for the sum of Kshs.37890/= being the taxed costs. The applicant also prays for costs of the application. The reasons for the application are that the Bill of costs was taxed on 9/10/2007 and a ruling delivered in favour of the applicant for Kshs.37890/= and further that neither the taxation nor the certificate of taxation have been altered, varied or set aside and finally that the certificate of taxation is final as to the amount due and owed by the Respondent to the applicant.

2. The application is also supported by the sworn affidavit of **Gitonga Kithinji Muriuki**, advocate, who says that his firm was instructed to represent the respondent on serious criminal charges preferred against him of abducting a minor child (Njeri Kimani) and that though he (advocate) attended court twice to represent him, the respondent did not pay any single cent towards the representation despite his (respondent's) many promises to do so. That consequently the advocate filed his bill of costs which was taxed on 9/10/2007 for Kshs.37890/= as per the annexure marked "GKM1".

3. The application was duly served upon the respondent on the 01/03/2008 but he did not file any Replying Affidavit or grounds in opposition to the application. He also did not turn up for the hearing on 9/04/2008. Section 51(2) of the Advocates Act provides as follows:?

***"51(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."***

4. The issue that arises is whether the court should exercise its discretion to enter judgment for the applicant as prayed. After carefully considering the provisions of the law, and especially sections 51(2) and 48 of the Advocates Act, and in light of the persuasive authority in the case of **Sharma –vs- Uhuru Highway Development Ltd [2001]2 EA 530**, I am satisfied that I should grant the application. In the first place, there is no contention about the retainer in this case. It is also not in dispute that the Certificate of Taxation issued on 30/10/2007 has neither been set aside nor altered by the court and I am thus satisfied that the amount as shown in the Certificate of Taxation is final as to the amount of the costs covered thereby.

5. In the result, I allow the application and enter judgment for the advocate in the sum of Kshs.37890/= all inclusive. The applicant shall also have the costs of this application.

6. It is so ordered.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of May 2008.**

**R.N.S. SITATI**

**JUDGE**