



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

**Misc. Appli. 204 of 2005**

**MUTUNGA & MUINDI ADVOCATES .....APPLICANT**

**VERSUS**

**M/S BUSSCAR LIMITED .....RESPONDENT**

**RULING**

On the hearing of a Notice of Motion filed by the applicant seeking an order for judgement for costs, the Respondent took a preliminary objection that under Section 51(1) of the Advocates Act (the Act) which states as follows:-

**“Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.”**

The remedy of the advocate who has taxed his costs is to file a suit for recovery of the same.

Mr. Munya for the Applicant in reply relied on the case of **In the matter of the Advocates Act Githenji & co. advocate v Chomba and others Misc. Application No.721 of 2000** in which Mbaluto J said

“the Statute Law (Miscellaneous Amendment Act) provides:-

“Notwithstanding any other provisions of this act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.”

The Amendment clearly allows an application under Section 51 to seek ‘an order that judgement be entered for the sum certified to be due with costs’ without first having to file a suit.”

In the case of **Shah Parekh v Apollo Insurance co. Ltd. Misc. Application No.257 of 2003** in my ruling I stated:-

“I am of the view that before execution can issue in respect of a certificate of costs it is necessary for the court to make such order in relation thereto as it thinks fit. It is, therefore, necessary for an application to be made to the court for an order that judgement be entered in the sum taxed.”

Section 52 (b) gives the court power to make such order in relation to a certificate of costs as it thinks fit subject to it being barred by limitation.

No procedure is laid down. However where in an Act or other Law, a right is conferred upon a person and no procedure is provided then the party wishes to enforce the right to do by bringing it before the court by way of an Originating Notice of Motion.

Like Mbaluto J, I take the view that an application in the form of a Notice of Motion is competent to apply for a judgement in respect of a certificate of taxed costs.

In the result I dismiss the preliminary objection with costs.

Dated and delivered at Nairobi this 14<sup>th</sup> day of March 2006.

P. J. RANSLEY

**JUDGE**