

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

MILIMANI COMMERCIAL COURTS

Misc Appli 465 of 2004

MUTHOGA GATURU & COMPANY PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD.DEFENDANT

RULING/JUDGMENT

This is an application for judgment. The application is brought by M/S Muthoga Gaturu & Company Advocates who acted for the respondent in **Nairobi HCCC No.1151 of 2002**. The application has been brought under the provisions of Section 51(2) of the Advocates Act Cap. 16 of the Laws of Kenya. The grounds for the application are that the costs as between the applicant and respondent were taxed in the sum of Kshs.268,030.40. The Deputy Registrar issued a Certificate of Taxation on 27th February 2006 for the said sum. There is no dispute as to the retainer. The Certificate of Taxation has neither been set aside nor altered by the court. The same is therefore final as to the amount of costs covered thereby. The application is supported by an affidavit sworn on 14.7.2006 by James Otieno Okeyo, an advocate in the applicant firm of advocates. To the said affidavit are annexed copies of the Certificate of Taxation and a letter from the applicants asking for their fees. The application is not opposed.

Section 51(2) of the Advocates Act reads 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.”**

This Section gives the court discretion to enter judgment where a suit has not been filed for recovery of costs due to an advocate. This discretion is however, only exercisable where there is no dispute as to the retainer and a certificate of the taxing officer has been issued and has not been successfully challenged.

The applicants have satisfied the requirements of Section 51 (2) of the said Act and are entitled to judgment for the sum in the Certificate of Taxation. Accordingly, judgment is hereby entered for the applicants in the sum of Kshs.268,030.40 with interest thereon at court rates from 27.2.2006 until

payment in full. The applicants shall also have the costs of this application. It is so ordered.

DATED and DELIVERED at NAIROBI this 5th day of October 2006.

F. AZANGALALA

JUDGE