



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**  
**CIVIL CASE NO. 559 OF 2004**

**KHAN & KATIKU ADVOCATES.....PLAINTIFF**  
**VERSUS**  
**CENTRAL ELECTRICAL INTERNATIONAL LTD.....DEFENDANTS**

**RULING**

The Applicant, which is a firm of advocates, seeks by this application (notice of motion dated 11th January, 2004) judgment for taxed costs against its client. The application is stated to be brought under Order 35, Rule 1 of the Civil Procedure Rules (the Rules), section 3A of the Civil Procedure Act, Cap. 21 and section 51 of the Advocates, Cap. 16. It is opposed by the client upon the main ground that the taxed costs have already been paid, nay, overpaid.

I have read the supporting and replying affidavit. I have also perused the proceedings before the taxing officer. Finally, I have given due consideration to the submissions of the learned counsels appearing. Although the bill of costs was not contested before the taxing officer, the learned counsel for the client did state before the taxing officer that the client had already paid Kshs.35,000/00 and sought time to put in submissions on the issue of that payment. Learned counsel for the advocates replied that there was no evidence of such payment. The taxing officer proceeded to tax the bill as drawn at Kshs.24,667/00 as it was not contested.

It is thus clear that the issue whether or not the advocates had already been paid their costs and were thus not entitled to be paid the taxed costs was not tried or determined before the taxing officer. It is doubtful that the taxing officer could have tried that issue. It seems to me that the issue cannot either be determined in the present proceedings. A suit is indeed necessary as urged by learned counsel for the client.

I therefore hold that in the particular circumstances of this case it would not be appropriate to enter judgment under section 51(2) of the Advocates Act, notwithstanding that there is no dispute as to the retainer and the certificate of taxation has not been set aside or altered. I will thus refuse the application. It is hereby dismissed with costs. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF JUNE, 2005.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 10TH DAY OF JUNE, 2005.**