



Julius Nyakiangana & Company Advocates v Makana (Commercial Miscellaneous Application E875 of 2024) [2025] KEHC 304 (KLR) (Commercial and Tax) (23 January 2025) (Ruling)

Neutral citation: [2025] KEHC 304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E875 OF 2024**

**H NAMISI, J
JANUARY 23, 2025**

**BETWEEN
JULIUS NYAKIANGANA & COMPANY ADVOCATES ADVOCATE
AND
ABEL RASUNGU MAKANA CLIENT**

RULING

1. By Notice of Motion dated 28 February 2024, the Applicant seeks the following orders:
 - i. That judgement be entered in favor of the Applicant against the Respondent in the sum of Kshs 40,600/= being the taxed and certified cost due to the Applicant;
 - ii. That the Respondent to pay the Applicant interest at court rates from the date of taxation herein;
 - iii. That the costs of the Application be borne by the Respondent.
2. The Application is supported by the Affidavit sworn by the Applicant and premised on the following grounds:
 - i. The Applicant Bill of Costs was taxed on 11 December 2023 and a Certificate of Taxation was issued to the effect on 16 January 2024;
 - ii. The Certificate of Taxation was served upon the Respondent which to date the Respondent has not paid the taxed sum of Kshs 40,600/=;
 - iii. Despite service and request for payment made to the Respondent, he has refused and/or declined to pay the taxed costs;



- iv. It is in the interest of justice and fairness that this application be allowed and judgement be entered as prayed.
3. The Applicant filed brief submissions in respect of the Application.
4. The Application is brought under Section 51(2) of the *Advocates Act*, Cap 26, Section 3A of the *Civil Procedure Act*, Cap 21 and Order 51 of the Civil Procedure Rules. Section 51 (2) of the *Advocates Act* provides as follows:

Pursuant to the provisions of Section 2 of the *Advocates Act* –“Client’ includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ an advocate and any person who is or may be liable to pay an advocate any costs.
5. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* (2006) eKLR it was held thus:

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....”
6. The Respondent has not participated in these proceedings from commencement, despite being served on numerous occasions.
7. Having read the Application, Supporting Affidavit as well as the attached documents, I am of the considered view that the same is merited. The Application is allowed and I make the following orders:
 - i. Judgement is hereby entered for the Applicant against the Respondent in terms of the Certificate of Costs dated 16 January 2024 for Kshs 40,600/=.
 - ii. Interest thereon is awarded at court rates from 16 January 2024 until payment in full.
 - iii. The Applicant is awarded costs assessed at Kshs 30,000/=.

DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF JANUARY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

.Nyakiangana.....for the Applicant

.N/A.....for the Respondent

Libertine AchiengCourt Assistant

