ABM Advocates LLP (Formerly Bryan Moturi & Associates) v Trident Insurance Company Limited (Miscellaneous Application E403 of 2024) [2025] KEHC 10748 (KLR) (Civ) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10748 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL

MISCELLANEOUS APPLICATION E403 OF 2024

F GIKONYO, J

JULY 3, 2025

BETWEEN

ABM ADVOCATES LLP (FORMERLY BRYAN MOTURI & ASSOCIATES) ..... APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED ..... RESPONDENT

RULING

1. The applicant/ advocate's notice of motion dated 18th February 2025, is seeking entry of judgement in its favour for Kenya Shillings One Hundred and Eleven Thousand, Eight Hundred and Forty-Seven (Kshs. 111, 847/-) only plus interest at Court rates in terms of Certificate of Taxation dated 10th December, 2024.

2. The application is made under Sections 1A, 1B, 3A 63 (e) of the *Civil Procedure Act* and Order 22 of the *Civil Procedure Rules*, 2010, Section 4(1), (2) and (3) of the *Fair Administrative Action Act*.

3. The application is based on the grounds set out in its body and the annexed affidavit sworn by Bryan Moturi. The main grounds are:-

    1. That the Respondent has not challenged the taxed amount nor filed any reference against the ruling of the Taxing Master.

    2. That the Respondent herein has failed and neglected to pay the stated amount even after several reminders to do so.

    3. That the Applicant/Advocate herein now prays for this Court to adopt the said Ruling as the final judgement of this Court regarding this matter in order to enable the Applicant recover the stated amount.

Analysis and Determination

4. The issue for determination is whether judgment should be entered for the applicant against the respondent in terms of the certificate of costs dated 10th December, 2024.

5. Section 51(2) of the *Advocates Act* provides that:-

> " 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 recovered thereby; and the court may make such order in relation thereto as it thinks fit, including where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."

6. The applicant exhibited copies of the bill of costs dated 20th February 2024, the Taxation Ruling dated 15th October 2024 and the certificate of costs dated 10th December 2024.

7. The applicant also filed an affidavit of service sworn by Juma Ogendi, a licensed court process server, to confirm service of the mention notice for 5th March 2025 in respect of the application upon the respondent through email on 6th March 2025. The mention notice is said to have been served a day after the date slated for mention. Therefore, the service of the mention notice was irregular.

8. There is also no proof of service of the application on record. This offends the rules of natural justice, which require that a person should not be condemned unheard. *Odhiambo Owiti & Co. Advocates v Dominion Farms Limited* (Miscellaneous Civil Application 8 of 2019) [2022] KEHC 10147 (KLR) (18 May 2022) (Ruling)

Disposal

9. Accordingly, I direct the applicant to serve the application upon the respondent. The order scheduling this matter for ruling is, therefore, vacated, and the matter is no longer for ruling. The application be fixed for directions. A notice thereof be served upon the respondent.

   Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3RD DAY OF JULY, 2025.

F. GIKONYO M.

JUDGE

In the presence of: -

Ms. Kamau for Muturi for Applicant

No appearance by Respondent

Kinyua C/A