



Maina t/a Maina Rogoi & Company Advocates v Monarch Insurance Company Limited (Commercial Miscellaneous Application E160 of 2024) [2025] KEHC 10863 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E160 OF 2024**

BK NJOROGE, J

JULY 24, 2025

BETWEEN

**DUNCAN KAIGI MAINA T/A MAINA ROGOI & COMPANY
ADVOCATES APPLICANT**

AND

MONARCH INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. This is a Ruling in respect of the Applicant’s application dated 11th November 2024, brought pursuant to Articles 47 and 159 of the Constitution of Kenya, 2010, and Section 51(2) of the Advocates Act, Chapter 16 of the Laws of Kenya.

Background Facts

2. The Applicant seeks the following reliefs:
 - a. That the Certificate of Costs issued in respect to the Taxation Order made on the 13th September 2024 for the sum of Kenya Shillings One Million Two Hundred and Forty Thousand (1,240,000) be hereby adopted as judgment and decree of this Honourable Court.
 - b. That the costs of this application be provided for.
 - c. Any other relief that the Court deems fit to grant.
3. The application is supported by the affidavit of B. Kiama Njiru, an Advocate of the High Court of Kenya, practicing with the firm of Maina Rogoi & Company Advocates, sworn on the same date.



4. In the supporting affidavit, the Applicant depones that on 13th September 2024, this Honourable Court issued a Taxation Order awarding the Applicant costs amounting to Kenya Shillings One Million Two Hundred and Forty Thousand (Kshs.1,240,000). The Applicant contends that, pursuant to Section 51(2) of the *Advocates Act*, they are entitled to have the Certificate of Costs dated 13th September 2024 adopted as a judgment and decree of the Court. The Applicant further asserts that the adoption of the Certificate of Costs as a judgment will expedite the settlement of the awarded costs and ensure compliance with the Court's orders. The Certificate of Costs has already been issued and is consistent with the Taxation Order, confirming that the amount due has been assessed and determined. It is the Applicant's position that failure to grant the orders sought would occasion prejudice, as it would deny them the right to enforce the costs awarded by the Court.
5. Pursuant to the directions of the Court, the application was to be canvassed and determined by way of written submissions.

Applicant's Submissions

6. The Applicant submitted that the sole issue for determination is whether the application seeking the Certificate of Taxation should be adopted as a judgment and decree of this Honourable Court.
7. The Applicant relied on Section 51(2) of the *Advocates Act*, which provides that once a certificate of costs is issued by the taxing officer, it shall be deemed final unless set aside or altered by the Court.
8. In support of this position, the Applicant referred to the Court of Appeal decision in *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR, which quoted with approval the case of *Lubullellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR. This is where the Court emphasized that once a certificate of taxation is issued and is unchallenged, it may be adopted as a judgment of the Court.
9. It was submitted that the ruling of the taxing officer (Deputy Registrar) was delivered on 6th August 2024. That the Respondent was duly served, as evidenced by the return of service filed in the matter.
10. The Applicant argued that the Respondent was fully aware of the taxation proceedings and has not filed any reference challenging the ruling of the taxing officer. This is provided for under Paragraph 11 of the *Advocates Remuneration Order*.
11. The Applicant averred that the Certificate of Costs dated 13th September 2024 has not been set aside. It is therefore only just and proper that the certificate of costs be adopted as a judgment of this Honourable Court.
12. In view of the foregoing, the Applicant humbly submitted that the Notice of Motion application dated 11th November 2024 is merited and ought to be allowed as prayed.

Issues For Determination

13. The Court has carefully considered the application together with the supporting affidavit. In its considered view, only a single issue falls for determination, namely:
 - a. Whether the Certificate of Costs dated 13th September, 2024 ought to be adopted as a judgment of the Court.



Analysis

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

The certificate of the taxing officer by whom any bill has been taxed, shall, unless 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.

15. The Court is vested with jurisdiction under Paragraph 11 of the *Advocates (Remuneration) Order* to entertain a reference from a party aggrieved by the decision of a taxing officer. This would be seeking, inter alia, to set aside the taxed bill and remit it for re-taxation. Upon careful consideration of the application and the pleadings filed herein, the Court takes note of the affidavit of service sworn by Mr. Isaac Marau Malonza, a duly authorized process server. It confirms that the Respondent, Monarch Insurance Company Ltd, was served with the Mention Notice and written submissions dated 30th April 2025. Service was effected first via email to info@monarchinsurance.co.ke at approximately 1:37 PM on the same day. Subsequently physical service was effected at the Respondent's offices at Chester House, 1st Floor, Koinange Street, Nairobi, on 2nd May 2025 at around 9:20 AM. The Respondent's secretary acknowledged receipt by stamping and signing on the reverse of the process server's copy, which has been duly filed in Court as proof of service.
16. Notwithstanding proper service, both electronic and physical, the Respondent has failed—either negligently or deliberately—to file any reference challenging the taxed bill or to take any other appropriate steps in response.
17. A perusal of the Court record reveals that the Respondent was afforded multiple opportunities to contest the bill of costs during the numerous mentions preceding the final hearing of the matter. Consequently, the Court finds it appropriate and just to allow the Applicant's prayer for the adoption of the Certificate of Taxation dated 13th September 2024 as a judgment of the Court.
18. The Certificate of Taxation is hereby adopted as a judgment of this Court. This pronouncement constitutes sufficient notice to the Respondent of its obligation to satisfy the adjudged costs, failing which the Advocate is at liberty to commence execution proceedings.
19. In line with the principle that costs follow the event, the Applicant, having succeeded in the application, is awarded costs, which shall be borne by the Respondent.

Determination

20. The Applicant's Application dated 11th November, 2024 is allowed in the following terms;
- (a) That the Certificate of Costs issued in respect to the Taxation Order made on the 13th September 2024 for the sum of Kenya Shillings One Million Two Hundred and Forty Thousand (1,240,000) be and is hereby adopted as judgment and decree of this Honourable Court.
- (b) That the Applicant is awarded costs of this application to be paid for by the Respondent.
21. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 24TH DAY OF JULY 2025.

NJOROGE BENJAMIN K.



JUDGE

In the presence of;

Mr. Ochieng for the Applicant for the Applicant.

N/A for the Respondent.

Mr. Luyai – Court Assistant

