



Kamunge t/a BW Kamunge & Co Advocates v Mungai (Miscellaneous Application 197 of 2022) [2024] KEHC 3929 (KLR) (5 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3929 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION 197 OF 2022**

A MSHILA, J

APRIL 5, 2024

BETWEEN

**BENSON WAINAINA KAMUNGE T/A BW KAMUNGE & CO
ADVOCATES APPLICANT**

AND

GLADYS GATHONI MUNGAI RESPONDENT

RULING

Background

1. Before court is the Notice of Motion dated 8th November, 2023 and brought under Section 51(2), 52(1), 55(1) and (2) of the Advocates Act Cap.16 Laws of Kenya and Order 51 Rule 1 of the Civil Procedure Code and other enabling provisions of the law. The Applicant sought for the following orders:-
 - a. That the Honourable Court be pleased to enter Judgment for the Advocate/Applicant in terms of the Certificate of Costs dated 11th September, 2023.
 - b. That any other Order that the Honourable Court may deem fit to make
 - c. That the costs of the application of the application be provided for.
2. The application is premised on the grounds on the face of the application and the Supporting Affidavit of Benson Wainaina Kamunge dated 8th November, 2023 made in support of the application; therein he states that the Respondent instructed the firm of B.W.Kamunge & Company Advocates to act on her behalf for its insured in Kiambu CMCC NO. 226 of 2019 Paul Mungai Ngure (Suing as the personal representative of the estate of Peter Kinyanjui Mungai (Deceased)).
3. The Applicant rendered legal services on behalf of the Respondent in the above-mentioned matter and the Respondent failed to pay the legal fees due and arising thereby necessitating the filing of the Bill of



Costs dated 14/11/2022 and a Ruling was delivered on 25/08/2023; a Certificate of Taxation dated 11/09/2023 was issued which taxed costs the Respondent has failed and/or neglected to settle.

4. The instant application was uncontested as the Respondent failed and or neglected to file any response despite service having been effected.
5. The Applicant prayed that judgment be entered as prayed for the sum of 185,235/- together with interest thereon. The Applicant also prayed for costs of the application.

Issues for Determination

6. Having considered the application and the supporting affidavit the issues framed for determination are;
 - i. Whether the application is merited for the court to adopt the Certificate of Taxation dated 11/09/2023 and enter judgment in the sum of 185,235/-

Analysis

Whether the application is merited for the court to adopt the Certificate of Taxation dated 11/09/2023 and enter judgment in the sum of 185,235/-

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

“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 orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs.”
8. The wordings of the above section empower the court to enter judgment on the taxed amount if the same is uncontested.
9. In determining whether the court should adopt the amount on the Certificate of Taxation dated 11/09/2023 as the judgment of the court it should be satisfied that the Certificate of Taxation has not been set aside.
10. Reference is made to the case of *Lubulellah & Associates Advocates v N. K. Brothers Limited* (2014) eKLR where the court observed that:-

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of Costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.”
11. From perusal of the court record this court is satisfied that the Ruling is uncontested as the Respondent has not moved any court by way of filing a Reference against the ruling nor has the Ruling been set aside, altered, varied and / or reviewed, nor has any appeal been filed.
12. Therefore, no other action is required from this court save to adopt the Certificate of Taxation dated 11/09/2023 as an order of this court and to enter judgment as prayed against the Respondent.



Findings & Determination

13. For the forgoing reasons this court makes the following findings and determinations:-

- i. This court finds the application to be meritorious and it is hereby allowed;
- ii. The Certificate of Taxation dated 11/09/2023 in the sum of 185,235/- is hereby adopted as an order of this court. Judgment be and is hereby entered in favour of the Applicant in the sum of Kshs.185,235/-;
- iii. A decree be issued in respect of the Certificate of Taxation dated 11/09/2023 and the Applicant be at liberty to execute for recovery of the same
- iv. Each party to bear its own costs of this application.

Orders Accordingly.

DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 5TH DAY OF APRIL, 2024.

HON. A. MSHILA

JUDGE

In the presence of;

Martin – Court Assistant

Mwangi for Applicant

Kiptanui for Waiganjo for Respondent

