



Malombo t/a OM Robinson & Co Advocates v Atta (Kenya) Limited (Miscellaneous Application E049 of 2023) [2024] KEHC 4563 (KLR) (15 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E049 OF 2023
DKN MAGARE, J
APRIL 15, 2024**

BETWEEN

**ROBINSON ONYANGO MALOMBO T/A OM ROBINSON & CO
ADVOCATES APPLICANT**

AND

ATTA (KENYA) LIMITED RESPONDENT

RULING

1. This is a ruling in respect of the Applicant 'Application dated 22/12/2023. It is supported by the advocate's affidavit. It seeks the conversion of the certificate of costs to a decree. The application was opposed though an affidavit dated 22/12/2023.
2. They stated that they asked for a copy of the ruling on 25/7/2023. They have written reminders in vain. They stated that they are surprised that the Applicant has a ruling. They prayed for even a day to deal with the ruling. This they were given but nothing happened.
3. The Application sought to convert the certificate obtained pursuant to the ruling of 19/7/2023 to a Judgement. This is for a sum of Ksh. 22,326,318,67 being the sum taxed on 19/7 2023 and certified by the Deputy Registrar on 26/7/2023 as due to the Applicant with interest thereon.
4. The Application arose from the Advocate/Client Bill of Costs arising from Mombasa HCCC 30 of 2020/=.
5. The Application is expressed to be brought under Section 51 (1) of the *Advocates Act* and Rule 51(2) of the *Civil Procedure Rules*. The said Section 51(2) of the *Advocates Act* provides thus:

“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.”

6. The said section has been litigated before. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* (2006) eKLR it was held: -

“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.....”

7. I find no plausible reason for not allowing the Application. The same is merited. Consequently, the said Application is therefore allowed.

Determination

8. I therefore make the following orders: -

- a. Judgment be and is hereby entered for the Applicant against the Respondent in terms of the Certificate of Costs dated 6th September 2023 for Kshs. 22,326,318,67.
- b. Interest thereon is awarded effective 26/8/2023 being 30 days from the date of certification of the taxation.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA ON THIS 15TH DAY OF APRIL, 2024.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Otieno for the Respondent

Miss Sidinyu for the Applicant holding brief for Malombo

Court clerk- Brian

