



**Mugo Githinji & Co. Advocates v Monarch Insurance Company Limited
(Application E182 of 2023) [2024] KEHC 4862 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
APPLICATION E182 OF 2023**

GL NZIOKA, J

MAY 8, 2024

BETWEEN

MUGO GITHINJI & CO. ADVOCATES APPLICANT

AND

MONARCH INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. By a notice of motion application dated 22nd February 2024, brought under the provisions of section 1A, 1B and 3A of the [Civil Procedure Act](#) (Cap 21) Laws of Kenya, section 51 (2) of the [Advocates Act](#) (Cap 16) Laws of Kenya, and Order 51 Rule 1 of the [Civil Procedure Rules](#), 2010, the applicant is seeking for the following orders: -
 - a. That this Honourable court be pleased to enter judgment in favour of the applicant for Kenya Shillings One Hundred and Seventeen Thousand Two Hundred and Twenty Five (Kshs. 117,225) being the taxed of the application herein/bill of costs.
 - b. That the respondent be condemned to pay costs of this application.
2. The application is supported by the grounds on the face of it and an affidavit sworn Mugo Githinji, an Advocate of the High Court of Kenya and the proprietor of the applicant's firm.
3. He deposes that, he filed a bill of costs on 30th November 2023 and served the respondent together with a notice of taxation dated 5th December, 2023. That, matter was heard and the bill taxed in the sum of Kshs. 117,225 and thereafter a certificate of taxation dated 2nd February 2024 issued.
4. That, the respondent has failed and/or delayed to settle the taxed costs despite being aware and a demand of the same having been made. Further, the certificate of taxation has not been appealed against or reviewed thus paving way for execution proceedings.



5. Upon considering the application, the court ordered that, the same be served for directions on 9th April 2024. On the material date, the court noted that the respondent had been served as evidenced by an affidavit of service dated; 27th March 2024, filed by Harrison Machio, the court process server and directed that the application be heard on 2nd May, 2024.
6. However, when the matter came up for hearing on 9th April 2024, Mr. Kinoti holding brief for Ms. Mutuku informed the court that they had served the respondent late on the previous day. The court deferred the hearing of the application to 7th May 2024 and directed the applicant to serve the respondent early enough.
7. However, when the matter came up for hearing on 2nd May, 2024, the respondent had not filed a response and was not in court, despite having been served as evidenced by an affidavit of service dated; 24th April 2024 filed by Harrison Machio, the court process server. The application was deemed unopposed.
8. Be that as it were, I have considered the application in the light of the materials availed in support thereof. I note that the law applicable is provided for under section 51(2) of the *Advocates Act*, states that: -

“The certificate of a taxing officer by whom it has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of 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.”

9. In that regard I note that the applicant has produced evidence of the certificate of taxation issued on; 2nd February 2024. The certificate of taxation has not been set aside nor varied and neither is there a there a dispute on retainer in the respective matter, therefore there is no justification to decline to issue the orders sought. However, I do note that there is no prayer for interest on the taxed sum in the application and as such none is awarded.
10. In conclusion, I enter judgment for the applicant in the sum of Kshs. 117,225. Costs of the application are awarded to the applicant.

DATED, DELIVERED AND SIGNED THIS 8TH DAY OF MAY, 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:

N/A for the applicant

N/A for the respondent

Ms. Ogutu: Court Assistant

