



REPUBLIC OF KENYA



**Kamonjo Kiburi t/a Kamonjo Kiburi & Co. Advocates v UAP Insurance Company Limited
(Miscellaneous Application 26 of 2018) [2024] KEHC 8964 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8964 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS APPLICATION 26 OF 2018**

JK SERGON, J

JULY 25, 2024

BETWEEN

**KAMONJO KIBURI T/A KAMONJO KIBURI & CO.
ADVOCATES APPLICANT**

AND

U.A.P INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 19th March, 2024 seeking the following reliefs;
 - (i) That the certificate of costs dated 6th March, 2024 be adopted as a decree of this court and leave to execute the same be granted.
 - (ii) Costs of this application be provided for.
2. The application is based on grounds on the face of it and the supporting affidavit of Kamonjo Kiburi the applicant herein.
3. The applicant avers that he is an Advocate of the High Court practising as such in the name and style of Kamonjo Kiburi & Co. Advocates.
4. The applicant avers that he rendered legal services to the respondent in Kericho CMCC No. 65 of 2014 (Previously Kericho HCCC No. 84 of 2011; Elizabeth Cherop Siongok & Another v Rosemary Mkwangeru & Others).
5. The applicant avers that the respondent refused to pay his fees and that he filed a bill of costs dated 1st September, 2017 for taxation. The applicant further avers that the costs were taxed at Kshs. 254, 636/= on 6th March, 2024 and a certificate of costs issued on 13th March, 2024.



6. The applicant avers that the respondent was advised to pay but neglected and/or refused to make the requisite payment.
7. The applicant was therefore seeking that the certificate of costs dated 13th March, 2024 be adopted as a decree of this Court and he be granted leave to execute his legal fees.
8. The matter came up for inter partes hearing. The Learned Counsel relied on the averments in the supporting affidavit and urged this Court to adopt the certificate of costs as a decree of this Court. There was no representation on the part of the respondent.
9. I have considered the pleadings and oral submissions by the applicant. The application is unopposed. I find that the sole issue is whether to adopt the certificate of costs as a decree of this court and the applicant be granted leave to execute for his legal fees. The applicable law is found at section 51 (2) of the Advocates Act which reads as follows; “ 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 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 judgement be entered for the sum certified to be due with costs.” The procedure set out in section 51 (2) of the Advocates Act aids expeditious disposal of cases relating to recovery of advocate-client costs.
10. The above mentioned provision was reiterated in the case of Musyoka & Wambua Advocates v Rustam Hira Advocate (2006) eKLR where it was held that: - “ section 51 of the Advocates Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgement 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...”
11. The Court takes into consideration that the certificate of taxation dated 13th March, 2024 has not been set aside or impugned by this court. From the material placed before it, this court finds that this is a suitable case for it to exercise its discretion in favour of the Applicant and therefore proceeds to enter judgement against the Respondent for the certified sum.
12. The application dated 19th March, 2024 is partially allowed thereby giving rise to the following orders;
 - (i) The taxation order made on 6th March, 2024 for the sum of Kshs. 254, 636/= be and is hereby adopted as a judgement and decree of the Court.
 - (ii) The prayer for execution of the decree is found to be premature hence the Order is declined.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 25TH DAY JULY, 2024.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Kamonjo for Applicant

