



Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Company Ltd (Miscellaneous Civil Application 173 of 2019) [2023] KEHC 574 (KLR) (8 February 2023) (Ruling)

Neutral citation: [2023] KEHC 574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CIVIL APPLICATION 173 OF 2019
GL NZIOKA, J
FEBRUARY 8, 2023**

BETWEEN

NGAYWA NGIGI & KIBET ADVOCATES APPLICANT

AND

INVESCO ASSURANCE COMPANY LTD RESPONDENT

RULING

1. By a notice of motion application dated January 11, 2022, the applicant is seeking for orders that judgment be entered in its favour against the Respondent in the sum of; Kshs Eighty Eight Thousand Six Hundred and Nine (Kshs 88, 689), being the certified costs due to it and that the costs of this application be provided for.
2. The application is supported by the grounds thereto and an affidavit sworn by the applicant's advocate, Joseph N Ngigi who deposes that the respondent instructed the applicant to act for the defendant in Naivasha CMCC No 767 of 2015: *Daniel Kimani Maina (Suing as the father of the next of Kin John Maina Kimani vs Munguti Joseph & Peter Mbugua Macharia*.
3. Thereafter, the Advocate/Clients costs were taxed to the tune of the subject amount and a certificate of taxation issued. However, the Respondent neglected and/or refused to settle the taxed costs, necessitating the filing of the application herein.
4. That, there is no dispute, that the Respondent retained the applicant to act for it. Further, the certificate of taxation has not been appealed against, set aside or altered. Hence the request for judgment herein. As such, that it is only fair and just in the circumstances of this case that judgment be entered as prayed for.
5. However, the respondent did not respond to the application. The application was fixed for hearing on June 13, 2022 and as per the affidavit of service dated February 4, 2022, the respondent was notified of



- the hearing of the application. The hearing notice was acknowledged by the respondent as evidenced by its stamp of; February 9, 2022, embossed on the hearing notice.
6. Be that, as it were, the matter was rescheduled to October 3, 2022. Again service was effected upon the respondent and acknowledged as per the affidavit of service dated May 25, 2022 and filed on June 13, 2022. Again there was no response to the application, and neither did the Respondent appear in court. Therefore, it follows that, the application is unopposed.
 7. I have considered the application and I find that, it's premised on the provisions of section 51(2) of the *Advocates Act*, (Cap 16) Laws of Kenya which 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.”
 8. In that, regard I am in agreement with holding of the court in the case of *Lesinko Njororge & Gathogo Advocates v Invesco Assurance Co Ltd* [2021] eKLR, where Gikonyo J stated that: -

“ (9) The procedure provided in section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.”
 9. The upshot of the aforesaid is that, I allow the notice of motion dated January 11, 2022, in terms of prayer (1) and (2) as prayed.
 10. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 8TH DAY OF FEBRUARY, 2023.

GRACE L NZIOKA

JUDGE

In the presence of

Mr. Kering for the applicant

No appearance for the respondent

Ms Ogutu: Court Assistance

