



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**MISC.APP.NO. 64 OF 2018**

**IN THE MATTER OF THE ADVOCATES ACT**

**BETWEEN**

**GITAU & KABURU ADVOCATES LLP.....APPLICANT**

**VERSUS**

**AFRICAN MERCHANT ASSURANCE CO.LTD.....RESPONDENT**

**RULING**

1. The Notice of Motion is dated the 27<sup>th</sup>September, 2019 and is brought under the provisions of Section 51 Rule 1 of the Advocates Act, and all the enabling provisions of the law; the applicant seeks the following orders;
2. That this application and Nyeri HCCC Misc.Applications Nos. 7/2019, 8/2019, 9/2019, 10/2019, 11/2019 and HCCC.Misc. App. No.91/2017 be consolidated;
3. That judgment be entered in favour of the applicant against the respondent for the total sum of Kenya Shillings KShs.571,160.30;
4. A decree be issued pursuant to the judgment;
5. There be no order as to costs.
6. The application is premised on the grounds on the face of the application and on the Supporting Affidavit made on the same date by **WILSON GATHOGO ADVOCATE** who deponed that the applicant had lodged six (6) Bill of Costs which were all allowed and taxed against the respondent in the total sum of KShs.571,160/30 and Certificate of Costs issued; that the respondent was duly served with the application and did not file a response to the same; and has failed and or neglected to make good any payment on the taxed costs; nor had it filed any references;
7. As the application and the retainer were uncontested and no appeals had been filed or the Certificate of Costs set aside the applicant prayed that judgment be entered as prayed;

**ISSUES FOR DETERMINATION**

8. After reading the supporting affidavit filed herein this court finds only one issue for determination which is whether the conditions of Section 51(2) of the Advocates Act have been satisfied;

**ANALYSIS**

9. 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 judgment be entered for the sum certified to be due with costs.”***

10. This section gives this court the jurisdiction to enter judgment provided the Bill of Costs has been taxed and the taxing master has issued a Certificate of Costs; in this instance this has been done and none of the certificates have not been appealed against, set aside or altered; as noted from the court record that despite being duly served with the application the respondent had not filed any response stating that it

disputed any retainer;

11. From the material placed before it this court was unable to make any finding or determination on whether the case before it was a suitable one for it to have exercised its discretion in favour of the applicant and thereafter proceed to enter judgment against the respondent for the certified sum; instead of striking out the application this court gave the applicant leave to file a Supplementary Affidavit to include the omissions; and the applicant duly complied by filing a Supplementary Affidavit on the 16/07/2020

12. In the light of the material placed before it, this court finds that all the conditions as set out in Section 51(2) of the Act have been satisfied; and is satisfied that this a suitable case for it to exercise its discretion in favour of the applicant and proceeds to enter judgment against the respondent for the certified sums; this court makes reference to the case of **KTK Advocates vs Baringo County Government (2018) eKLR** where it was held that when “.....*the two conditions are satisfied the court has the discretion to enter judgment for the sum certified due with costs.*”

#### **FINDINGS AND DETERMINATION**

13. In the light of the foregoing this court makes the following findings and determinations;

- (i) This court finds that all the conditions set down in Section 51(2) of the Advocates Act have been satisfied; the application is found to have merit and is hereby allowed;
- (ii) The Misc. Applications are hereby consolidated with the instant application;
- (iii) Judgment is hereby entered in favour of the applicant against the respondent in the total sum of KShs.571,160.30;
- (iv) There shall be no order as to costs.

Orders Accordingly.

**Dated, Signed and Delivered at Nyeri this 5<sup>th</sup> day of January, 2020.**

**HON. A. MSHILA**

**JUDGE**