



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**MISC.APP.NO. 73 OF 2019**

**IN THE MATTER OF THE ADVOCATES ACT**

**BETWEEN**

**NGAYWA NGIGI & KIBET ADVOCATES.....APPLICANT**

**VERSUS**

**XPLICICO INSURANCE COMPANY LIMITED.....RESPONDENT**

**RULING**

1. The Notice of Motion is dated the 24<sup>th</sup> September, 2019 and is brought under the provisions of Section 51(2) of the Advocates Act and the applicant seeks the following orders;

- i. That judgment be entered in favour of the applicant against the respondent for the sum of Kenya Shillings KShs.140,995/-;
- ii. The respondent do pay to the applicant the costs of the application;

2. The application is premised on the grounds on the face of the application and on the Supporting Affidavit made on the same date by **JOSEPH N.NGIGI ADVOCATE** who deponed that the applicant had lodged its Bill of Costs which was allowed and taxed against the respondent in the sum of KShs.140,995/= and a Certificate of Cost was 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; and as the application was uncontested the applicant prayed that judgment be entered as prayed;

3. The applicable law is found at Section 51(2) of the Advocates Act 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.”**

4. Even though the application was uncontested it is incumbent upon the applicant to make an averment in the Supporting Affidavit that it had satisfied the conditions of taxation and that the Certificate of Costs had not been set aside, altered varied or appealed against; the affidavit only makes reference to the respondent’s refusal to pay the legal fees leading to the filing of the Bill of Costs dated 3/07/2019 and its taxation;

5. This court states that it is a court of record and reiterates that to justify an order under the provisions of section 51(2) the court must be satisfied by the material placed before it one cannot decipher whether the certificate of costs had not been appealed against, set aside, varied or altered; so as to make a determination;

6. From the material placed before it this court is unable to make any finding or determination on whether the case before it is a suitable one for it to exercise its discretion in favour of the applicant and thereafter proceed to enter judgment against the respondent for the certified sum;

7. Instead of striking out the application this court will give the applicant leave to file a Supplementary Affidavit to include the omissions.

Orders Accordingly.

**Dated, Signed and Delivered at Nyeri this 5<sup>th</sup> day of December, 2019.**

**HON. A. MSHILA**

**JUDGE**