



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISC. APPLICATION NO. 74 OF 2017**  
**IN THE MATTER OF THE ADVOCATES ACT CAP 16**  
**AND IN THE MATTER OF ADVOCATE – CLIENT BILL OF COSTS**  
**BETWEEN**  
**NYAUNDI TUIYOTT & COMPANY ADVOCATES....ADVOCATES/APPLICANT**  
**- VERSUS -**  
**AFRICA MERCHANT ASSURANCE COMPANY LTD.....CLIENT/RESPONDENT**  
**RULING**

1. *Nyaundi Tuiyott & Co. Advocates* (hereinafter referred to as the advocate) have filed a Notice of Motion dated **2nd May, 2018** which is brought under **Section 51 (2) of the Advocates Act Cap 16**. That Section provides as follows:

***“(2) 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.”***

2. The costs of the advocate as against the client, *Africa Merchant Assurance Co. Limited*, were taxed on **14th December, 2017** at **ksh 138,694**. The advocate’s retainer has not been disputed. The client was served with the application for judgment, but did not file any documents in opposition nor did it attend hearing before the court on **21st May, 2018**, even though it had been served for that date.

3. The Courts in various decisions have held that in the case where the costs of an advocate are taxed and there is no dispute on retainer that judgment should be entered in favour of such advocate. Some of such decisions are:

i. ***Lubulellah & Associates Advocates v N K Brothers Limited [2014] eKLR*** where it was stated as follows:

***“The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the Court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum...”***

ii. In ***Owino Okeyo & Co. Advocates vs Mike Maina & Muthithi Investments Co. Ltd*** the court had the following to say:

***“In my view, the Section is applicable where there is no dispute about the “retainer”. In that situation, it makes it expedient, and less costly, for the advocate to obtain a quick Judgment. And that, I believe, is the purpose of that Section – that in clear cut situations where there is no dispute about the retainer, and the bill of costs has been taxed, it would be highly unjust to require the Advocate to file suit for the recovery of his fees.”***

4. In the end, Judgment is hereby entered for *Nyaundi Tuiyott & Co Advocates* as against *Africa Merchant Assurance Co. Limited* for **Ksh 138,694**. The said advocate is also awarded the costs of the *Notice of Motion* dated **2nd May, 2018**.

DATED, SIGNED and DELIVERED at NAIROBI this 13th day of June, 2018.

MARY N. KASANGO

JUDGE

***Ruling read in open court in the presence of***

Court Assistant.....Sophie

.....for the Applicant

.....for the Respondent