



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**Miscellaneous Application 364 of 2009**

**IN THE MATTER OF THE ADVOCATES ACT (REMUNERATION ORDER)**

**AND**

**IN THE MATTER OF HIGH COURT SUCCESSION CASE NO. 1830 OF 1999**

**IN THE MATTER OF THE ESTATE OF JOHN NGUGI KIMANI**

**NJIIRI KANYIRI & THUKU ADVOCATES .....APPLICANT**

**VERSUS**

**ADMINISTRATORS OF THE ESTATE OF JOHN**

**NGUGI KIMANI –DECEASED.....1<sup>ST</sup> RESPONDENT**

**PAUL NJOROGE NGUGI.....2<sup>ND</sup> RESPONDENT**

**JAMES GITAU NGUGI.....3<sup>RD</sup> RESPONDENT**

**PRISCA NYAKAIRU NGUGI.....4<sup>TH</sup> RESPONDENT**

**LUCY WANGUI NGUGI.....5<sup>TH</sup> RESPONDENT**

**JOHN NGUGI WARINGA.....6<sup>TH</sup> RESPONDENT**

**RULING**

By this application, the Applicant prays for judgment in terms of the certificate of costs dated 14<sup>th</sup> June, 2012. It is made by a Notice of Motion dated 29<sup>th</sup> June, 2012 and taken out under **Section 5 (2)** of the **Advocates Act** and **Section 3A** of the **Civil Procedure Act**.

The application is supported by the annexed affidavit sworn on 29<sup>th</sup> June, 2012 by Bernard Muriuki Kanyiri, Advocate and is based on the grounds that the certificate of taxation was issued against the Respondent on 14<sup>th</sup> June, 2012 for a sum of Kshs. 13,863,538/= . It is also the Applicant's contention that the said certificate of taxation has not been challenged, altered or set aside by the court, and that there is

no dispute as to the retainer between the Respondents and the Applicant.

At the oral canvassing of the application, Mr. Gatheru appeared for the Applicant but the Respondent's counsel did not attend. A close scrutiny of the affidavit of service upon the Respondents shows that the Respondents were served on 20<sup>th</sup> July, 2012, for hearing on 31<sup>st</sup> July, 2012. Seeing that this was sufficient time for the Respondents to attend court, but they did not do so, the court proceeded *ex parte*.

Mr. Gatheru told the court that the application was for judgment in terms of the certificate of costs and asked the court to grant the order as prayed.

I note that the application is premised on **Section 51 (2)** of the **Advocates Act**. Under that provision of the law, the certificate of the taxing officer by whom any bill has been taxed is final as to the amount of the costs covered thereby, unless it is set aside or altered by the court. However, I also note from the court file that there are two pending applications whose outcome might affect this application. The first one is an application by Paul Njoroge Ngugi, the 2<sup>nd</sup> Respondent, brought by Chamber Summons dated 18<sup>th</sup> June, 2012 seeking the ruling and order of the Taxing Officer to be set aside. It has been given a date for hearing on 26/9/2012. The 2<sup>nd</sup> application is brought by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents by way of a Chamber Summons dated 20<sup>th</sup> June, 2012. It seeks orders to set aside both the ruling made by the Deputy Registrar on 6<sup>th</sup> June, 2012 and the certificate of taxation issued on 11<sup>th</sup> June, 2012. It further seeks an order that there was no retainer between the Applicants and the Respondents. It is scheduled for hearing on 3<sup>rd</sup> October, 2012.

Against that background, I don't find it prudent to give a ruling in the application dated 29<sup>th</sup> June, 2012. The delivery of the said ruling is accordingly stayed pending the hearing and determination of the aforesaid 2 applications.

**DATED** and **DELIVERED** at **NAIROBI** this 1<sup>st</sup> day of October, 2012.

**L.NJAGI**  
**JUDGE**