



**Ibrahim Isaack and Company Advocates v Monarch Insurance Company Ltd (Miscellaneous Civil Application 53 of 2020) [2025] KEHC 13709 (KLR) (Civ) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION 53 OF 2020  
NW SIFUNA, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**IBRAHIM ISAACK AND COMPANY ADVOCATES ..... APPLICANT**

**AND**

**MONARCH INSURANCE COMPANY LTD ..... RESPONDENT**

**RULING**

1. This ruling is on the Application dated 3<sup>rd</sup> September 2024 by which IBrahim Isaack & Co. Advocates a law firm, is seeking judgment to be entered against their client Monarch Insurance Company Ltd in terms of the Certificate of Costs together with costs and interests at 14% per annum. That is prayer (1) of the Application, and the only substantive prayer, as prayer (2) is for the costs of this Application.
2. The Application has stated that it has been brought pursuant to provisions of Section 51(2) of the *Advocates Act* and Order 11 (3) (1) (h) of the Civil Procedure Rules. It is supported by the Supporting Affidavit of Fred Kondo Athuok an Advocate.
3. Clearly this Application is misconceived and incompetent, for a number of reasons. First neither the Application (Prayer 1) nor the Supporting Affidavit has stated the amount for which the judgment is sought, the amount in the supposed Certificate of Taxation, the name of the Taxing Officer, nor the date of the Certificate.
4. This to me is a grave omission arising probably from goof in draftsmanship. Besides, a party is bound by its pleadings and the Court cannot add to a pleading what has not been pleaded or purport to fill in gaps and goofs resulting from poor draftsmanship.
5. Especially in such a case where the errors are fundamental and of substance rather than of procedure. While procedural errors may be cured by dint of Article 159(2) of *the Constitution*, fundamental errors



such as the ones in this Application go to the root of the Application, hence cannot be cured by Article 159(2).

6. To buttress the position on draftsmanship, I refer to Order 11 Rule 3, which the Application has cited. This provision is clearly inapplicable to taxation and post taxation proceedings. Care needs to be exercised in drafting pleadings.
7. Having found that this Application is in substance, incompetent and misconceived and of having defects that go to the root of it, it is hereby dismissed with no order as to costs.

**DATED AND DELIVERED AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

