



**Wambugu & Muriuki Advocates v Magic General Contractors
Limited (Commercial Miscellaneous Application E577 of 2024)
[2025] KEHC 13564 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

COMMERCIAL MISCELLANEOUS APPLICATION E577 OF 2024

MN MWANGI, J

SEPTEMBER 26, 2025

IN THE MATTER OF THE ADVOCATES ACT (CAP 16 LAWS OF KENYA)

-AND-

IN THE MATTER OF TAXATION OF ADVOCATE-CLIENT BILL OF COSTS

-AND-

IN THE MATTER OF WAMBUGU & MURIUKI ADVOCATES

-AND-

IN THE MATTER OF MISCELLANEOUS SUIT NO. E552 OF 2021

-AND-

IN THE MATTER OF MISCELLANEOUS SUIT NO. E553 OF 2021

-AND-

IN THE MATTER OF MISCELLANEOUS SUIT NO. E554 OF 2021

-AND-

IN THE MATTER OF MISCELLANEOUS SUIT NO. E555 OF 2021

BETWEEN

WAMBUGU & MURIUKI ADVOCATES APPLICANT

AND

MAGIC GENERAL CONTRACTORS LIMITED RESPONDENT



RULING

1. The applicant filed a Notice of Motion application dated 17th July 2024 pursuant to the provisions of Section 51(2) of the *Advocates Act*, Cap 16 of the Laws of Kenya, Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules, 2010* and all other enabling provisions of the law. The applicant seeks an order that this Court adopts four Certificates of Taxation issued on 7th April 2022 by Hon. Claire Wanyama (Deputy Registrar) in Misc. Suit No. E552 of 2021, Misc. Suit No. E553 of 2021, Misc. Suit No. E554 of 2021 & Misc. Suit No. E555 of 2021 for Kshs.3,591,398.07, Kshs.3,595,052.07, Kshs.3,851,583.80 & Kshs.23,281,433.00 respectively, as a judgment and decree of the Court against Magic General Contractors Limited. The applicant also prays for an order for leave to execute the aforesaid judgment against the respondent.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Kelvin Mugambi, an Advocate of the High Court of Kenya and learned Counsel for the applicant. He averred that the applicant filed Advocate-Client bills of costs dated 27th July 2021. That the Deputy Registrar, Hon. Claire Wanyama taxed the said bills as against the respondent in Misc. Suit No. E552 of 2021, Misc. Suit No. E553 of 2021, Misc. Suit No. E554 of 2021 & Misc. Suit No. E555 of 2021 for Kshs. 3,591,398.07, Kshs.3,595,052.07, Kshs.3,851,583.80 & Kshs.23,281,433.00, respectively, and Certificates of Taxation were issued on 7th April 2022.
3. Mr. Mugambi contended that attempts at out-of-court settlement failed, and that no objections, references, or applications to vary/set aside the said Certificates were lodged within the prescribed timeline, which has since lapsed. He further stated that the respondent has not settled the taxed costs and in order for execution to commence, the Certificates of Taxation must first be adopted as a judgment and decree of the Court.
4. In opposition to the application, the respondent filed a replying affidavit sworn on 31st January 2025 by Mr. Wilson Gatimu Irungu Mbaria, a Director & Shareholder of the respondent company. Mr. Gatimu averred that the applicant, Davani Group Limited and the respondent entered into a Deed of Settlement dated 10th June 2022 to resolve pending legal fees, with parties waiving all other remedies except for enforcement of the said Deed. That following the settlement, the respondent made five (5) monthly payments up to June 2024, when financial difficulties arose. He averred that the respondent is now recovering and seeks leave of the Court to resume payments under the Deed of Settlement to clear the outstanding balance of Kshs.3,236,000/= . He urged the Court to allow the respondent to regularize payments in the interest of justice and judicial economy.
5. In a rejoinder, the applicant filed a further affidavit sworn on 14th February 2025 by Mr. Kelvin Mugambi, an Advocate of the High Court of Kenya and learned Counsel for the applicant. He contended that under Clause 1 of the Deed of Settlement, the parties therein were bound by the terms of the said Deed and had agreed to waive other rights or remedies available to them, subject to full compliance with the terms of the Deed, which means that in the event of non-compliance, the parties therein were allowed to pursue other remedies available to them.
6. He further stated that Clause 2.3 of the Deed expressly provides that upon breach and failure to remedy the same within 14 business days of notice, the applicant would be at liberty to execute the Certificates of Taxation. Mr. Mugambi averred that the Deed required settlement of Kshs.7,100,000/= exclusive of VAT by a deposit of Kshs.1,000,000/=, 9 equal monthly instalments of Kshs.500,000/= and a final instalment of Kshs.364,000/= payable on the 10th month. He also averred that payment of each



instalment was to be made by the 7th of each month, with full payment expected to be completed by September 2023.

7. He deposed that the respondent failed to comply with the terms of the Deed and he granted the respondent time until June 2024 to resume payments, but thereafter the respondent ignored emails and (telephone) calls. Mr. Mugambi asserted that no payment has been made since 7th June 2023. He stated that in compliance with the terms of the Deed, the applicant issued a 14-day demand notice to the respondent in 2024, but it failed to comply.
8. The instant application was canvassed by way of written submissions. The applicant's submissions were filed by the law firm of now Advocates LLP on 17th February 2025, whereas the respondent's submissions were filed on 18th March 2025 by the law firm of Wamuyu Kangethe & Associates.
9. Ms Nungo, learned Counsel for the applicant relied on the decisions in *Kioko t/a Urbanus K & Associates Advocates v Trident Insurance Company Ltd* [2024] KEHC 10515 (KLR) and *Lubulellah & Associates Advocates v NK Brothers Limited* [2014] KEHC 8685 (KLR), and submitted that under Section 51(2) of the *Advocates Act*, a Certificate of Taxation is final unless set aside or altered, and judgment may be entered where the retainer is not disputed. She further submitted that the applicant's costs were taxed on 7th April 2022 by Hon. Claire Wanyama, and the Certificates of Taxation issued thereafter have not been set aside, stayed, or challenged through any objection or reference proceedings.
10. Counsel stated that the respondent does not dispute the retainer, and contended that it is in breach of the Deed of Settlement, and it had failed to rectify the default even after being issued with a demand letter dated 21st June 2024. She submitted that the applicant has met the legal threshold for adoption of the Certificates of Taxation dated 7th April 2022 as a judgment of the Court. Ms Nungo referred to the case of *Otieno Ragot & Company Advocates v Kenya Ports Authority* [2017] eKLR and urged this Court to grant the applicant interest on the taxed costs, noting that Courts have inherent discretion to determine when interest should run.
11. Ms Wamuyu, learned Counsel for the respondent relied on the case of *Kinyua v Consolidated Bank of Kenya Limited* [2022] KEHC 11465 (KLR), and submitted that the terms of the Deed of Settlement supersede the Certificates of Taxation issued by the Deputy Registrar as the said Deed which was executed after issuance of the said Certificates restructured the respondent's liabilities. She stated that the respondent has already made five payments under the Deed, being demonstration of goodwill. She stated that in any event, the Deed provided that both parties waived all other rights or remedies, except where enforcement of the Deed itself became necessary. She contended that the applicant cannot revert to the Certificates of Taxation.
12. Ms Wamuyu cited the Court of Appeal case of *Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited* [2017] KECA 152 (KLR), and argued that Courts cannot rewrite contracts between parties. She asserted that the only remedy available to the applicant is pursuing enforcement of the Deed of Settlement separately, not adoption of the Certificates of Taxation. Counsel submitted that since the said Deed was an agreed settlement consistent with Article 159 of the *Constitution*, the instant application should be dismissed to uphold Alternative Dispute Resolution mechanisms.

Analysis And Determination.

13. Having considered the instant application, the grounds on the face of it and the affidavits filed in support thereof, the replying affidavit by the respondent and the written submissions by Counsel for the parties, the issue that arises for determination is whether judgment should be entered against the respondent in accordance with the Certificates of Taxation.



14. Adoption of a Certificate of Taxation as a judgment of the Court is provided for under Section 51(2) of the Advocates Act which states that –

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.

15. The said provisions form the legal basis for this Court’s jurisdiction to enter judgment based on a Certificate of Taxation, provided that the bill has been taxed, a Certificate issued, and there is no dispute on retainer. In the case of Lesinko Njororge & Gatbogo Advocates v Invesco Assurance Co. Ltd [2021] KEHC 9046 (KLR), the Court in allowing an application similar to this one held that-

The procedure provided in section 51(2) of the Advocates Act aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate. The application may be commenced by way of a Notice of Motion which in law is potent tool for originating a suit.

16. The applicant filed its Advocate-Client bills of costs dated 27th July 2021 against the respondent. Thereafter, the Deputy Registrar taxed the said bills in favour of the applicant in Misc. Suit No. E552 of 2021, Misc. Suit No. E553 of 2021, Misc. Suit No. E554 of 2021 & Misc. Suit No. E555 of 2021 for Kshs.3,591,398.07, Kshs.3,595,052.07, Kshs.3,851,583.80 & Kshs.23,281,433.00, respectively, and issued Certificates of Taxation on 7th April 2022. It is not disputed that to date no objections, references, or applications to vary/set aside the said Certificates have been filed and the respondent has not fully settled the taxed costs.

17. In opposition to the application herein, the respondent relied on a Deed of Settlement dated 10th June 2022 entered into by the applicant, Davani Group Limited and the respondent to resolve pending legal fees, wherein they waived all other remedies available to them except enforcement of the said Deed. The respondent stated that pursuant to the said Deed, it made five monthly payments until June 2024 when it encountered financial difficulties. It however averred that it is now recovering and seeks leave of the Court to resume payments under the Deed to clear the outstanding balance of Kshs.3,236,000/=.

18. In a rejoinder, the applicant asserted that under Clause 1 of the Deed of Settlement, the waiver of remedies was conditional upon compliance. Further, under Clause 2.3 of the said Deed, upon breach of the terms of the Deed and failure to remedy the same within 14 days of Notice, the applicant was entitled to execute the Certificates of Taxation.

19. Clause 1 of the Deed of Settlement dated 10th June 2022, provides that-

Subject to compliance by the Parties with the terms herein, the Parties shall waive unconditionally any and all other rights or remedies that may otherwise have been available to them in connection with any matters between them SAVE to the extent it may be necessary to enforce the terms of this Deed. (Emphasis added).



20. Further, Clause 2.3 of the Deed states that –

In the event of breach of the terms of this Deed, and the Judgement Debtor and the Associate Judgement Debtor fails to remedy that breach (or to agree to a reasonable period within which to achieve a remedy) within Fourteen (14) Business Days of being given notice in writing to do so; the Firm and the Former Partner shall be at liberty to execute the Certificates of Taxation issued in the matters listed in the Preamble (G). (Emphasis added).

21. From the foregoing, I am inclined to agree with the applicant that waiver of the other available remedies to the parties to the Deed of Settlement was conditional upon full compliance with the terms therein. Furthermore, Clause 2.3 expressly provides that in the event of non-compliance with the terms of the said Deed, the applicant's right to execute the already issued Certificates of Taxation would automatically accrue without the need for a fresh suit.

22. The respondent defaulted and/or breached the terms of the Deed of Settlement and vide a demand letter dated 20th June 2024, it was notified of the default and asked to rectify the same within fourteen (14) days of the demand, failure to which the applicant would recover its legal fees as per the taxed costs, since the negotiated costs in the Deed of Settlement were as per the applicant's fee notes dated 6th September 2016. It is worthy of note that the respondent has neither alleged nor demonstrated that it responded to the applicant's demand within the fourteen (14) days provided for under the Deed, which have since lapsed.

23. The respondent's argument that the terms of the Deed of Settlement supersede the Certificates of Taxation issued by the Deputy Registrar since the said Deed was executed after issuance of the said Certificates, thus restructuring the respondent's liabilities carries no weight, in light of the provisions of Clause 2.3 of the Deed of Settlement reproduced in paragraph 20 of this Ruling.

24. In view of the foregoing and the fact that there is no dispute on retainer, I am satisfied that all the conditions set out in Section 51(2) of the *Advocates Act* have been satisfied by the applicant hence this is a suitable case for the exercise of my discretion in favour of the applicant. Consequently, I hereby enter judgment for the applicant as against the respondent in Misc. Suit No. E552 of 2021, Misc. Suit No. E553 of 2021, Misc. Suit No. E554 of 2021 & Misc. Suit No. E555 of 2021 for Kshs.3,591,398.07, Kshs.3,595,052.07, Kshs.3,851,583.80 & Kshs.23,281,433.00, respectively.

25. On the issue of interest, Regulation 7 of the *Advocates (Remuneration) Order* provides that –

An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.

26. From the above provisions, it is evident that in order for an Advocate to charge interest, there must have lapsed a period of one month after the bill was delivered to the client, and the claim for interest should be raised before the amount of the bill is paid or tendered in full. None of the parties herein has demonstrated when the bills of costs in Misc. Suit No. E552 of 2021, Misc. Suit No. E553 of 2021, Misc. Suit No. E554 of 2021 & Misc. Suit No. E555 of 2021 were served upon the respondent. It is further noteworthy that the bills of costs in the aforesaid matters have not been produced for this Court to ascertain whether a claim for interest of the taxed amount was made. The applicant did not pray for interest on the taxed amount on the face of the application herein. The prayer for interest surfaced for the first time at paragraph 10 of the applicant's further affidavit.



27. An affidavit contains evidence in support of the reliefs sought in an application. In the premise, since the applicant did not pray for interest on the taxed sum in the Notice of Motion herein, it did not make a proper application for interest. An order for interest on the taxed sum cannot issue.
28. Accordingly, this Court finds that the instant application is merited. It is allowed in the following terms –
- i. Judgment is hereby entered for the applicant as against the respondent in Misc. Suit No. E552 of 2021, Misc. Suit No. E553 of 2021, Misc. Suit No. E554 of 2021 & Misc. Suit No. E555 of 2021 for Kshs.3,591,398.07, Kshs.3,595,052.07, Kshs.3,851,583.80 & Kshs.23,281,433.00, respectively;
 - ii. Leave is hereby granted to the applicant to execute the aforesaid judgment against the respondent on the outstanding amount; and
 - iii. Costs of this application shall be borne by the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF SEPTEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Mugambi holding brief for Ms Nungo for the applicant

Ms Wamuyu for the respondent

Ms B. Wokabi – Court Assistant.

