

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

MISCELLANEOUS APPLICATION NO E359 OF 2024

S.I MWAURA & CO
ADVOCATES.....APPLICANT

VERSUS

MEDITEST DIAGNOSTICS SERVICES LIMITED.....
....RESPONDENT

RULING

Background

1. The Applicant has filed the application dated 18th June 2025 seeking orders to adopt the taxation order that was issued on 17th June 2025 as a judgment of the court. Accordingly, it prays that judgment be entered in its favour against the Respondent for Ksh. 368,325.88 as per the Certificate of Taxation dated 17th June 2025 together with interest thereon at court rates from the date of taxation until payment in full. The Applicant also prays for directions regarding who should bear the costs of the application.
2. The application is founded on various provisions of law including section 51(2) of *the Advocates Act*. It is also supported by the affidavit of one Sammy Mwaura.
3. The Applicant avers that the Taxing Master of the court delivered her ruling on its Bill of Costs dated 10th December 2024 on 10th June 2025 in which it was awarded Ksh. 368,325.88 as costs. It avers that the court subsequently

issued a Certificate of Costs dated 17th June 2025 in the matter.

4. The Applicant avers that the Certificate of Costs was served on the Respondent but it (the Respondent) has allegedly refused to pay the taxed amount. As such, it contends that it has become necessary to obtain the orders sought to allow for forced recovery.
5. The Applicant avers that the Respondent has not filed a reference to challenge the Certificate of Costs. As such, it contends that the certificate represents the final order of the taxed costs.
6. The Respondent filed a replying affidavit dated 21st July 2025 to oppose the application. It contends that it has filed application no. ELRCMISC/E225/2025 to challenge the taxation order. As such, it avers that the request to adopt the Certificate of Taxation is premature.
7. The Respondent avers that the application challenging the taxation order is pending consideration by the court. As such, it contends that it will be grossly unfair to allow the instant application.
8. The Respondent avers that because the motion challenging the taxation order is pending resolution, the Applicant should hold his horses until the other application is adjudicated upon. It contends that to allow this motion will render nugatory the proceedings in ELRCMISC/E225/2025.

Analysis

9. Although the Respondent has referred to ELRCMISC/E225/2025, it did not attach copies of the application to its replying affidavit to enable the court ascertain what it is about. Nevertheless, the court has accessed the said application on the Case Tracking Systems.
10. A perusal of the application demonstrates that it is not a reference within the meaning of rule 11 of *the Advocates Remuneration Order*. Rather, it is an application for leave to file a reference out of time. As such and for the moment, there is no reference that has been filed to challenge the taxation order of under consideration.
11. A further examination of the application in ELRCMISC/E225/2025 shows that the Respondent sought stay of execution of the taxation order pending further proceedings. However, the court did not grant the orders. Instead, it ordered that the application be served. As such, there is currently no order to stay adoption and enforcement of the impugned taxation order.
12. Section 51(2) of *the Advocates Act* provides 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.”

13. In effect, a taxation order issued by the Taxing Master is final in respect of the amount awarded unless it is set aside or varied by the court. Further, the court is authorized to enter judgment for the amount in the order unless the retainer of the advocate is disputed.
14. The Black's Law Dictionary defines the phrase retainer to mean "a client's authorization for a lawyer to act in a case". As such, a retainer can only be considered as disputed if a client denies that the lawyer had instructions to act on his behalf.
15. I have scrutinized the application in ELRCMISC/E225/2025 and it is clear to me that the Respondent does not dispute the Applicant's retainer. Rather, it (the Respondent) asserts that the amount which the Taxing Officer awarded as instructions fees is excessive. That being the case, I find that there is no dispute as to the retainer of the Respondent which will disentitle the court to enter judgment in terms of the Certificate of Taxation dated 17th June 2025.
16. The court has considered the reasons which the Respondent has proffered to resist adoption of the Certificate of Taxation as a judgment of the court. The main and perhaps only reason is that it (the Respondent) has applied for leave to challenge the taxation order out of time.
17. With respect, the court cannot accept that as a reason to refuse to enter judgment in favour of the Applicant. As long as the Certificate of Costs has not been set aside or reviewed, it represents the final instrument as to the fees

that is due to the Applicant. As such, the court is bound to give effect to it.

18. If the Respondent wishes to resist the award, it should pursue an order for stay of enforcement of the Certificate of Costs in the pending proceedings between the parties in ELRCMISC/E225/2025. Until it (the Respondent) obtains such orders, it cannot expect the court to stall enforcement proceeding merely because it (the Respondent) is seeking leave to challenge the Certificate of Taxation.

Determination

19. The upshot is that the court finds that the Applicant has a valid Certificate of Costs dated 17th June 2025 in its favour for Ksh. 368,325.88.
20. The court further finds that the said Certificate of Costs has not been varied or set aside.
21. As such, the court finds that it (the Certificate of Costs) represents the final pronouncement on the quantum of fees which the Applicant is entitled to.
22. The court finds that the Applicant is entitled to judgment for the aforesaid sum in terms of section 51(2) of *the Advocates Act*.
23. Accordingly, the court hereby enters judgment for the Applicant against the Respondent for the sum of Ksh. 368,325.88 as set out in the aforesaid Certificate of Costs.
24. The court awards the Applicant interest on the aforesaid sum at court rates from 17th June 2025.
25. The court grants costs of the application to the Applicant.

**Dated, signed and delivered on the 15th day of December,
2025**

**B. O. M. MANANI
JUDGE**

In the presence of:

..... for the Applicant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI