

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT

NAIROBI

ELC MISC E024 OF 2024

**IN THE MATTER OF THE ADVOCATES ACT, CAP
16 AND
THE ADVOCATES REMUNERATION ORDER
1962**

BETWEEN

**AGWARA & MUTEGI
ADVOCATES.....ADVOCATE/APPLICANT**

VERSUS

KANGEMI RUMWE WOMEN GROUP

**(Sued through its officials and legal representatives,
namely JANE WANJIKU JAMES (CHAIRLADY)**

MARY WANJIRU MAINA (SECRETARY)

GRACE WANJIRU NDEITHI (TREASURER)

JOSEPHINE WAITHIRA NJUGUNA (DIRECTOR)

.....RESPONDENT/CLIENT

RULING

1. Before me for determination is the application dated 14th January 2025, brought under Article 159 of the Constitution, Section 5 Rule 2 of the Advocates Act, Sections 1A (1) & (2) and 3A of the Civil Procedure Act,

Order 51 of the Civil Procedure Rules and Order 7 of the Advocates Remuneration Order, in which the Applicant seeks the following orders:

a) The Honourable Court be pleased to set aside the orders issued on 4th November 2024, marking the file as closed.

b) Judgment be entered in favour of the Applicant/Advocate for the sum of Kshs 959,575/= as certified by the Deputy Registrar of this court on 30th September 2024.

c) Interest at the rate of 14% per annum be applied to the certified amount from 13th November 2023 (one month following the delivery of the itemized bill of costs) until payment in full.

d) The costs of this application and of the suit be awarded to the Applicant/Advocate.

2. The application is premised on the grounds appearing on

its face together with the Supporting Affidavit of Brian Alex Ochieng, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that the Applicant represented the Respondent in ELC Petition E001 of 2022. That upon conclusion of the matter, the Applicant prepared and submitted a bill of costs to the Respondent detailing the fees payable.
4. He averred that after hearing the parties, the bill was taxed at Kshs 959,575/=, and was subsequently certified by the Deputy Registrar on 30th September 2024.
5. He asserted that the Certificate of Costs issued by the Deputy Registrar has not been adopted as a judgment under Section 51 Rule 2 of the Advocates Act due to an oversight that arose after the file was erroneously closed following the dismissal of the application dated 11th October 2024.
6. He contended that it is in the interest of justice for the court to set aside the orders closing the file and to adopt

the Certificate of Costs as a judgment of this court.

7. He maintained that the Applicant is entitled to interest at the rate of 14% per annum under Order 7 of the Advocates Remuneration Order on the certified costs, with effect from 13th October, 2023.

THE RESPONDENT'S CASE

8. The Respondent filed grounds of opposition dated 7th April 2025 in opposition to the application.
9. The Respondent asserts that the application is premature, incompetent, and misconceived, as the Certificate of Costs has neither been extracted nor filed in accordance with the statutory requirements. The Respondent further contends that the Applicant has no basis to move the court under Section 51(2) of the Advocates Act to enter judgment in the absence of a Certificate of Costs, which is a mandatory requirement.
10. It was further contended that there are ongoing proceedings challenging the Deputy Registrar's ruling in

LC Misc E258 of 2025.

11. The application was canvassed by way of written submissions.

THE APPLICANT'S SUBMISSIONS

12. The Applicant filed its submissions dated 7th April 2025.

13. On behalf of the Applicant, Counsel outlined the following issues for the Court's determination:-

a) Whether the order issued on 4th November 2024, marking the file as closed, should be set aside.

b) Whether judgment should be entered in favour of the Applicant for the certified amount of Kshs 959,575/=.

c) Whether the Applicant is entitled to interest at the rate of 14% per annum from 13th November 2023 until payment in full.

14. Regarding the first issue, Counsel submitted that the order closing the file resulted from an oversight following the dismissal of the Respondent's application dated 11th

October 2024. Counsel contended that the error leading to the order was procedural and did not involve a determination on the merits. In urging the court to set aside the orders, counsel relied on the case of **Patel v E A Cargo Handling Services Ltd (1974) E A.**

15. Regarding the second issue, Counsel submitted that the ruling delivered on 30th September 2024 is binding on the parties as it has neither been appealed nor set aside. It was further submitted that the Respondent has not advanced any valid reason why judgment should not be entered.

16. Regarding the third issue, Counsel submitted that the Applicant is entitled to interest on the certified costs for the time and value of money lost due to nonpayment. To support this point, reliance was placed on the case of **Supermarine Handling Services Ltd v Kenya Revenue Authority (20101) KECA 373 (KLR).**

17. In conclusion, Counsel urged the court to allow the application with costs.

18. As of the time of writing this ruling, the Respondent

had not filed its submissions as directed.

ANALYSIS AND DETERMINATION

19. Having considered the application, the grounds of opposition, and the Applicant's submissions, the only issue for determination is whether the Applicant is entitled to the orders sought.

20. The Applicant seeks to set aside the order closing the file on the basis that judgment should have been entered on the taxed bill of costs.

21. The Applicant contended that the file was closed due to an administrative oversight following the dismissal of an application challenging the taxed costs. This court is hereby called upon to determine whether the Applicant has complied with the law.

22. Section 51(2) of the Advocates Act, Cap 16, Laws of Kenya provides as follows:

“The certificate of the taxing officer 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 other 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.”

23. It is clear from the foregoing provision that the foundation for entry of judgment on a taxed bill of costs is the certificate of costs. Until such a certificate is issued and placed on record, there is no enforceable determination upon which judgment may be entered.

24. The order closing the file was purely administrative. It did not determine the rights of the parties, nor did it constitute a judgment or decree of the court. An administrative act cannot be set aside to pave the way for a judgment that is procedurally unavailable.

25. Courts have consistently held that a taxed bill of costs without a certificate is unenforceable.

26. In **Omondi v KCB Ltd (2012) eKLR** the court held that:

“The certificate of costs is the foundation upon

***which a court can lawfully enter judgment;
until it is extracted and recorded, there is no
judgment on which execution can be founded.”***

27. Similarly, in **Kariuki v Another v Mwaura (1995)**

eKLR, the court emphasized that :

***“A taxed bill of costs only becomes enforceable once
a certificate of costs has been formally issued and
placed on record.”***

28. In the absence of a certificate of costs, no judgment can be entered, and therefore, there is no substantive basis for the court to set aside the closure. The application is proper only where a final or subsisting order or judgment exists that the court can review or set aside.

29. In the matter at hand, the Applicant seeks to set aside the marking of the file as closed, arguing that judgment on the taxed bill of costs should be entered.

30. No certificate of cost has been extracted, and therefore no judgment exists. Without a judgment, the court cannot set aside the closure order because the closure was merely administrative.

31. In the end, I find that the application is premature and lacks merit. However, the Applicant is at liberty to extract the certificate of costs and, upon doing so, move the court in accordance with the law.

32. The upshot of the foregoing is that the application is hereby dismissed with costs.

33. RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 21ST DAY OF JANUARY, 2026.

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:

Ochieng for the Applicant

Sakimpa for the Respondent