

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ELC MISCELLANEOUS APPLICATION NO.015 OF 2025

BRUCE ODENY & CO. ADVOCATES
.....**APPLICANT/ADVOCATE**

VERSUS

JARED ODONGO ALILA.....1ST
RESPONDENT/CLIENT

PETER HABIL LISIASIA..... 2ND
RESPONDENT/CLIENT

(Arising from SIAYA CM ELC CASE NO. 40 OF 2020)

BETWEEN

JOHN OWITI OGOLA.....
APPLICANT

VERSUS

JARED ODONGO
ALILA.....RESPONDENT

RULING

1. The subject of this ruling is the Notice of Motion application dated 17/07/2025 brought under the provisions of Section 51(2) of the Advocates Act. The application arises from **SIAYA CM ELC NO. 40 OF 2020** wherein the Advocate /Applicant represented the Respondent up to conclusion of the said case and is now seeking to recover its legal fees.

2. The Applicant seeks conversion of the certificate of costs issued on the 01.07.2025 to a decree and judgment of the court.
3. The application is premised on the grounds on its face and the supporting affidavit sworn by Agnes Akinyi an advocate working with the applicant firm.
4. It is deponed that the Applicant filed its advocate -client bill of costs dated the 18.02.2025 for taxation and determination of its fees. 3. The bill was taxed by the taxing master of this court on the 20.06.2025 and allowed in the sum of Kshs.118,418/= and a certificate of taxation issued on the 01.06.2025. A copy of the same is annexed as "AA-1". It is averred that the same has not been challenged or set aside.
5. The application is not opposed. The 1st respondent attended court on 15/10/2025. I inquired why he had not responded to the application and he informed the court that he had many cases and he did not know what to do. The Court informed him that it is important to state all these in writing. He then sought more time to respond to the application which I obliged. I also issued directions on the disposal of the application by way of written submissions.
6. The applicant did not respond to the application and further failed to attend court on 4/11/2025 when the application was scheduled for confirmation of compliance with the court's direction.

SUBMISSIONS

7. The application was disposed by way of written submissions. The applicant filed submissions dated 4/11/2025. The respondent did not file submissions either.

ANALYSIS AND DETERMINATION

8. I have considered the application and the submissions filed by the applicant. The main issue for determination is whether the application is merited.
9. The application is brought under the provisions of Section 51(2) of the Advocates Act which reads; -

"The certificate of the taxing officer by whom any bills has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount 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".

10. The current application seeks that the taxed costs be converted into a decree and judgement of the court. The ruling of the taxation by Hon Mkala Deputy Registrar dated 20/06/2025 and the Certificate of Taxation forms part of the record. As indicated earlier the respondent appeared before court a confirmation that he was served. The court explained to him that he needed to respond in

writing which opportunity he squandered. Maybe this would have been his opportunity to state his thoughts on the costs. As it is I have nothing before me to show that the amount is disputed and or that it was altered by the taxing Master or set aside.

11. The power donated to the court mandates it to declare the certificate of the taxing master as final as to the amount therein and that judgement be entered accordingly. I have also read the decision in the case of **Republic-vs- City Council of Nairobi Ivyland Park Ltd (interested party) Exparte Inderpal Singh & 2 others (2021) eKLR** cited by counsel for the applicant. The learned Judge faced with an application brought under the same provisions seeking that the court enters judgement in favor of the advocate on taxed costs stated thus;-

7.As regards entry of judgment, section 51(2) of the Advocates Act grants this Court power to enter judgment in an Advocates' favour on taxed costs 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”.

8.It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer. This position has been upheld in various cases including **Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited (supra) , Dally and Figgis Advocates vs Homelex Limited (2013) eKLR** and **Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Ltd (2012) eKLR**. In addition Rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 % until payment in full.’

12. I’m persuaded by the above dictum and see no impediment to granting the prayers sought in the present application.
13. I accordingly, allow the Notice of Motion application dated 19th July 2025 save that there shall be no orders as to costs on the application.

Orders accordingly.

Dated, signed and delivered at Siaya this 29th day of January 2026.

HON. JUSTICE A. E. DENA

JUDGE
29/01/2026

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Ms. Akinyi for the Applicants

No Appearance for the respondent

Court assistant: Ishmael Orwa

ORIGINAL