

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E402 OF 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF ORDERS OF THE HIGH COURT AT MILIMANI
ISSUED IN HCCCMISC E501 OF 2024**

BETWEEN

OLOO & OLOO ADVOCATES LLPAPPLICANT

VERSUS

KENYA BROADCASTING CORPORATION.....RESPONDENT

JUDGMENT

1. Vide chamber summons dated 25th July 2025, the applicant sought leave of this Court to apply for Mandamus to compel the respondent to settle advocate/ client costs taxed in **HCC MISC APPL No. E501 of 2024** on 6th September, 2024 pursuant to the bill of costs dated **24th May, 2024** in the sum of Kshs 415,048.30. The taxed costs were in respect of legal services rendered in **HCCC 578 of 2008** which suit was dismissed for want of prosecution vide a ruling rendered on **10th November, 2015**.
2. Pursuant to leave of court granted in **HC MISC JR application No. E229 of 2025**, by Justice Chigiti SC on **24th November, 2025**, the applicant filed this substantive notice of motion dated 8th December, 2025. This Court directed the applicant to serve the respondent with the motion for interpartes hearing

and it also gave timelines for compliance on 15th December, 2025. The respondent neither entered an appearance nor filed any response to the application.

3. The application was argued orally on 4/2/2026 as scheduled with only the applicant's counsel submitting in support of the application. When the court inquired from Ms Kihara as to whether the advocate had obtained judgment on the taxed costs, she informed the court that they had not obtained any Judgment.
4. The issue, therefore, is whether the application for mandamus is competently before this Court.
5. Before answering this question, there are two preliminary jurisdictional issues that I must determine. These jurisdictional issues though not raised by the respondent, as the respondent despite being served with the application, did not appear or file any response to the application, are critical because a court of law is presumed to know the law. Furthermore, jurisdiction is what gives the court the power to adjudicate the merits of a dispute. Where the court is of the view that it has no jurisdiction, it must down its tools, whether parties raise the issue of jurisdiction or not.
6. As to whether the court can on its own motion raise and determine a jurisdictional issue, the locus classicus case of **Owners of Motor Vessel Lilian S v Caltex Oil Kenya Limited** is instructive. The Court of Appeal stated as follows:

“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“ By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of

both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

See Words and Phrases Legally defined – Volume 3: I – N Page 113

31. It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.

32. I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.

34. In I Congresso del Partido, [1978] 1 QB 500, the River Rima, Gatoi International Inc v Arkwright – Boston M. M. Insurance Co. & Others and The Evpo Agnic, the respective courts analysed the evidence before

the court and upon that evidence the question of jurisdiction was immediately decided.”

7. See also **Odera t/a AJ Odera & Associates v Machira t/a Machira & Co Advocates (Civil Appeal 161 of 1999) [2013] KECA 208 (KLR) (11 October 2013) (Judgment) and**
8. The ruling rendered on 10th November, 2015 dismissed the suit which was filed against the respondent and others. The applicant was instructed by the respondent to represent the respondent in HCC 578 of 2010 on 10th February, 2010.
9. The applicant filed an advocate/ client bill of costs in May 2024. The question is, were the costs recoverable where they were sought after six years from the date when the suit against the respondent was dismissed?
10. I have perused the documents attached to the application for leave to apply, which documents include certificate of taxation dated 6th September, 2024, demands for settlement of the said certificate of taxation, both dated 6th February 2025 and 18th August 2024. I have also seen the ruling on taxation dated 7th August 2024 by Hon. L.A. Mumassaba Deputy Registrar and the ruling by the court in HCCC 578 of 2010 dated 10th November, 2015.
11. An Advocate-Client relationship is contractual. It follows therefore, that any dispute arising therefrom would be subject to the provisions of **Section 4(1) (a) of the Limitation of Actions Act which stipulates that, actions founded**

on contract may not be brought after the end of six years from the date on which the cause of action accrued.

12. The question is when does time start running for purposes of Section 4(1) (a) of the Limitation of Actions Act. In the case of **Abincha & Co. Advocates v Trident Insurance Co Ltd [2013] eKLR** the Court stated as follows in answering this question:

“Any claim or action for an Advocate’s costs is subject to the statute of limitation. As already seen also, time begins to run from the date of completion of the work or the lawful cessation of the retainer.”

13. In HCCC No. 578 of 2010, the ruling that dismissed the suit for want of prosecution was rendered on 10th November, 2015. On the other hand, there is no evidence that the applicant even filed a party and party bill of costs for taxation and if so, when this took place. The advocate’s advocate/ client bill of costs is dated 24th May 2024 and must therefore have been filed in court either on that date or thereafter. It was then taxed vide a ruling dated 7th August, 2024 and a certificate of taxation issued on 6th September 2024.

14. No doubt, the applicant advocate is seeking to recover its legal fees incurred for representing the respondent client in HCC 578 of 2010, following instructions given on 10th February, 2010, which matter was determined vide a ruling dated 10th November, 2015 and no appeal, and it has not been shown that an appeal was filed to challenge that ruling.

15. In the **Abincha & Co. Advocates v Trident Insurance Co Ltd** (supra) the Court referred to the **Halsbury's Laws of England, 4th Edition, Volume 28 at paragraph 879 (page 452)** which states that:

“...if judgment has been given and there is no appeal, time runs from the judgment, and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.

In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.

A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time runs against a solicitor from the completion of the work and not from the delivery of the bill. If some only of items included in the bill are statute-barred, the solicitor may recover in respect of the balance.”

16. Mutai J faced with a similar situation in **John Magiya and Company v Punjani (Family Miscellaneous Application E015 of 2024) [2025] KEHC 9229 (KLR) (20 June 2025) (Ruling)** stated as follows, following the **Abincha** (supra) case:

“16. Whether or not the bill is statute-barred depends on when exactly the relationship ended. The law is that the statute of limitations begins

to run from the date the judgment was delivered unless there is evidence that the advocate was retained for post-judgment work.

*17. When faced with a similar case, in **Abincha & Co Advocates v Trident Insurance Co Ltd [2013] eKLR**, Waweru, J had the following to say at paragraph 28:-*

“28. As already seen, any claim or action for an advocate’s costs is subject to the statute of limitation. As already seen also, time begins to run from the date of completion of the work or lawful cessation of the retainer. Time does not begin to run from the date of delivery of the bill! Section 48(1) of the Advocates Act therefore cannot offer any defence against limitation.”

*18. The above position was reiterated by Ngaah, J in **Gathiga Mwangi & Co. Advocates v Jane Mumbi Kiano [2016] KEHC 4079 (KLR)**, where it was held that:-*

“Thus far there is no dispute; the point of departure between the parties appears to me to be the point at which time started running. According to the applicant, time started running when he ceased acting on 3rd October, 2013 while the respondent’s position is that the clock started ticking in February, 2007 when the court delivered its judgment in the matter in which the applicant’s services were provided.

*The answer as to which of the opposing arguments is the correct interpretation of the law appears to be in **Halsbury’s Laws of England**,*

4th Edition, Volume 28 at paragraph 879 which was cited with approval by Hatari, J. in the Abincha & Co. Advocates versus Trident Insurance Co Ltd case (supra); it is stated in that paragraph as follows:-

879. Solicitors costs in relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action:

1. If a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of termination of the action or of the lawful ending of the retainer of the solicitor;

2. If there is an appeal from the judgment in the action, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided;

3. If a judgment has been given and there is no appeal, time runs from the judgment and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.

In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.

A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time run against a solicitor from the completion of the work and not from the delivery of the bill. If only some of the items included in the bill are statute barred, the solicitor may recover in respect of the balance.

This citation must have been making reference to the Solicitor’s Act, 1974 which applies in England but, in the absence of any local statutory provision on this issue, it remains the closest indication of when time begins to run against the filing of an advocate/client bill of costs. It is instructive that time started running from the date the judgment was delivered assuming that counsel was then still on record and not from the date counsel ceased acting, after the delivery of the judgment.”

17. The Court of Appeal in Otieno, **Ragot & Company Advocates v National Bank of Kenya Limited (Civil Appeal 19 of 2018) [2023] KECA 685 (KLR) (9 June 2023) (Judgment)** stated as follows on the issue of advocates’ bill of costs being time barred:

“An advocate ought to know that his relationship with his client is contractual in nature and governed by the Limitation of Actions Act and would be to blame for any consequences that may arise from his/her failure to take out proceedings to recover fees within the time set by statute.”

18. Meoli J in **Kamunda Njue & Co Advocates v County Council of Narok (Miscellaneous Application E232 of 2022) [2024] KEHC 3530 (KLR) (Civ) (19 March 2024) (Ruling)** had this to say concerning advocate/ client bill of costs which was later found to be statute barred:

“The Respondent’s preliminary objection is premised on Section 4(1) of the Limitation of Actions Act, which states as follows: -

“ The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

(a)actions founded on contract;

(c)actions to enforce an award;

(d)actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e)actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.”

13.First, it is pertinent to observe that a preliminary objection based on limitation is not a technicality but a matter that goes to the root of the Court’s jurisdiction; no court has jurisdiction to hear a matter that is time barred. The Court of Appeal in Thuranira Karauri Vs. Agnes Ncheche [1997] eKLR held that:

“We do not understand how the Judge could proceed with the trial without finally determining such an important point of jurisdiction and it is pointed out that as a general rule, a point or issue of limitation of time goes to the root of jurisdiction which this Court should determine at the first instance. Subsequently, that where a suit is time barred, the

same is incompetent and consequently a court has no jurisdiction to entertain such suit”.

14. In determining whether the Applicant’s bill of costs was filed out of time, the court must contemporaneously determine when the cause of action arose. There is no dispute that the advocate’s claim for costs in respect of Civil Suit No. 1565 of 2000 in the High Court of Kenya at Nairobi – Livingstone Kunini Ntutu v County Council of Narok & 2 Others and is founded on the contract for professional services between the parties. There is no dispute that subject matter was concluded on 19.03.2014 when a ruling was delivered in the suit as can be gleaned from the Bill of Costs. The said date was the date of completion of work and the enforcement of the contract by way of an action was subject to the limitation period as set out in section 4(1) (a) of the Limitation of Actions Act. Thus, the Applicant’s claim being one based on contract for professional services rendered, ought to have been filed by way of a bill of costs or otherwise, within a period of six years upon the accrual of the cause of action, namely the date of completion of the work on 19.03.2014.

15. This court concurs with Waweru J. in Abincha & Co Advocates v Trident Insurance Co Ltd [2013] eKLR where he stated inter alia that:

“As already seen, any claim or action for an advocate’s costs is subject to the statute of limitation. As already seen also, time begins to run from the date of completion of the work or lawful cessation of the retainer. Time does not begin to run from the date of delivery of the bill! Section 48(1) of the Advocates Act therefore cannot offer any defence against limitation...I therefore hold that any of the various bills of costs filed by the Advocate more than six years after completion of the work which he was retained by the Client to do, or after the lawful termination of the retainer in respect of such work, is statute-barred by virtue of section 4(1) (a) of the Limitation of Actions Act.”

“Even if the statute of limitation did not apply to the Advocate’s bills of costs (and clearly it does!) the Advocate having presented what appeared to be a final fee note upon completion of each brief, and the same having been paid by the Client who then proceeded to archive or destroy its related files, the Advocate is estopped in law and in equity from turning around, between 8 and 11 years later as the case may be, to raise “final” bills of costs”

16.The foregoing accords with Halsbury’s Laws of England, 4th Edition, Volume 28 at Paragraph 879 where it is stated concerning when time starts to run that:

“In relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action;

1.if a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of termination of the action or of the lawful ending of the retainer of the solicitor;

1.if there is an appeal from the judgment in the action, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided;

2.if judgment has been given and there is no appeal, time runs from the judgment, and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.

In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.

A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time runs against a solicitor from the completion of the work and not from the delivery of the bill. If some of items included in the bill are statute-barred, the solicitor may recover in respect of the balance.”

17.The Applicant only filed the bill of costs on 19.04.2022, some eight (8) years after the delivery of the ruling in Civil Suit No. 1565 of 2000 in the High Court of Kenya at Nairobi – Livingstone Kunini Ntutu v County Council of Narok & 2 Others and seven (7) years after the decision of the Court of Appeal in respect of the resultant appeal, which

was delivered on 24.04.2015. Sections 23 and 24 (1) & (2) of the Limitations Act, Section 120 of the Evidence Act and or estoppel which the Applicant has cited do not aid his case.”

19. From the above exposition, it is clear to this Court that the advocate/ applicant herein had, from 10th November, 2015, six years to claim for their costs from the client. Six years lapsed on 10th November, 2021. Pursuant to section 4(1) (a) of the Limitation of Actions Act, the advocate cannot claim for costs of legal fees from the client after elapse of six years and in this case, from the date when the case in which the advocate was instructed to represent the client, was dismissed. There is no evidence of acknowledgment of the stale claim after elapse of the six-year period.

20. Additionally, section 46 of the Act provides for limitation period for suing the Corporation or bringing any action or proceeding from that date when such cause of action arises. The limitation period is one year. So that, even if section 4(1) (a) of the Limitation of Actions Act was inapplicable in this case where the relationship between the advocate and client is contractual, the lesser period which is one year would still catch up with the applicant herein as stipulated in section 46 of the Kenya Broadcasting Corporation Act, Cap 221 of Laws of Kenya.

21. Section 46 of the KBC Act provides that:

46. Limitation

Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution of this Act or of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

(a) the action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim and of the intention to commence the action or legal proceedings, has been served upon the Managing Director by the plaintiff or his agent;

(b) the action or legal proceedings shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

22. In the premises, I find that the advocate/client costs were statute by the time the bill of costs was being filed for taxation in May 2024 and that the taxation thereof and a certificate of taxation issued by the Deputy Registrar had no effect of validating or reviving that which was already stale.

23. Although there is no reference challenging the certificate of taxation in accordance with Paragraph 11 of the Advocates Remuneration Order, nevertheless, as was stated in **Benjamin Leonard Mcfoy v United Africa Company Limited (UK) [1962] AC 152**, the taxation of advocate/ client

costs was a nullity as no costs could have been taxed and judgment entered since the claim for costs was statute barred and therefore the subsequent proceedings were a nullity including these proceedings. The Court in the *Mcfoy* case stated as follows:

“If an act is void, then it is in law a nullity. It is not only bad ...and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

24. Even assuming that the bill of costs as taxed was not statute barred, the second jurisdictional question on the judicial review application is whether mandamus against the respondent can issue on an advocate/client certificate of taxation without the advocate first seeking and obtaining a judgment and decree issued by the Court.
25. Probed by the Court, the applicant’s counsel conceded that there was no judgment or decree sought and or issued by the court.
26. Mandamus to compel a public officer only issues to compel performance of a statutory or public duty and even if that were not to be the case, execution for costs by an advocate against a client can only be permitted where there is a judgment entered pursuant to section 51 of the Advocates Act and a decree issued capable of being enforced. A certificate of taxation is not a decree capable of being executed.

27. The law only allows execution or enforcement of decrees and not certificates of taxation/costs. Moreover, Section 38 of the Civil Procedure Act provides for the power of the court to enforce execution and states that:

Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of decree—

(a) by delivery of any property specifically decreed;

(b) by attachment and sale, or by sale without attachment, of any property;

(c) by attachment of debts;

(d) by arrest and detention in prison of any person;

(e) by appointing a receiver; or

(f) in such other manner as the nature of the relief granted may require.

28. On the other hand, Order 22 Rule 6 of the Civil Procedure Rules provides for the procedure used for execution and states that:

Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions herein before contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A:

29. I reiterate that a certificate of costs is not an executable instrument. This is as per section 51(2) of the Advocates Act and as explained in the cases of **Rubo Kimngetich Arap Cheruiyot v Peter Kiprof Rotich [2006] eKLR** and **Ndungu Githuka Advocates v Geoffrey Moriaso Ole Mailoy [2019] eKLR**. In the former case, the Court stated as follows:

“It is my view that a Decree duly approved and signed had to be on record for any execution to take place, whether for the eviction, costs or otherwise. As far as the parties in a suit are concerned, a certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being “executed”. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a decree first. It is true that the Decree may not be necessarily or always contain the ascertained costs. Costs can be determined before a decree is issued or subsequently, after the Decree has been drawn. However, for one to recover costs, there must be a decree. Any money awarded by court including costs is only payable under a decree particularly, if it is through enforcement (see Order XXI, Rule 1).”

30. Similarly in **Lawrence Mwangi T/A Mwangi & Co. Advocates v John Mathiaka Kimundu [2016] eKLR** Janet Mulwa J faced with a similar situation stated as follows and I concur that:

“There is no dispute that there exists a certificate of costs issued by the Taxing Master in favour of the Respondent Advocates – in this

application. The respondent has not demonstrated existence of a judgment or decree arising capable of being executed. The holder of the certificate of taxation ought to apply for judgment in the High Court in terms of Section 48, 49 and 51(2) of the Advocates Act to be entered based on the certificate of costs. Only after that would a decree issue and execution proceedings be undertaken. There having been no judgment and decree from the certificate of costs, the proclamation against the applicant's property was procedurally irregular and illegal. The degree purportedly issued by the court on the 17th October 2014 has not been exhibited for the courts consideration.”

31. Thus, a certificate of taxation is not *per se* executable. Only a decree is. Therefore, to execute, the certificate of taxation has to be followed by entry of judgment and issuance of a decree. Mandamus proceedings come at the tail end post judgment against the government or government agency governed by the Government Proceedings Act or the statute establishing the agency or corporation that bars execution by way of attachment of assets of the entity.

32. In this case, **section 47 of the Kenya Broadcasting Corporation Act** bars execution by way of attachment of the Corporation's assets. The section provides:

47. Restriction on execution against property of Corporation

Notwithstanding anything to the contrary in any law—

(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any property of the Corporation; but the Managing Director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgement or order, be awarded against the Corporation;

(b) no property of the Corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Managing Director.

33.I had the opportunity to pronounce myself on this same issue of whether a certificate of taxation is executable without a judgment and decree for costs under section 51(2) of the Advocates Act in **M. Korongo & Company Advocates v Monarch Insurance Company Ltd; Anglo African Property Holdings Limited (Objector) (Miscellaneous Civil Application E181 of 2022) [2024] KEHC 548 (KLR) (30 January 2024) (Ruling) - Miscellaneous Civil Application E181 of 2022** as follows:

“6. Before I delve into the merits and demerits of the subject application, first things first. I observe that upon the issuance of the certificates of costs in the series matters herein, the advocate proceeded to instruct the auctioneers to attach the properties believed to belong to the Respondent to recover the said taxed Advocate/Client Bill of Costs.

7. Albeit there is no Reference filed or issue of retainer raised and none is pending, and therefore a certificate of costs once issued is final unless set aside or there is a dispute over retainer, Section 51(2) of the Advocates Act stipulates that the Applicant holder of certificate of costs shall apply to court, once certificate of costs is issued, for the court to enter judgment adopting the certificate of costs and issuing a decree, capable of being executed. There is never a shortcut to recovery of costs in advocate client matters, following taxation. See Rubo Kipngetich Arap Cheruiyot v Peter Kiprop Rotich Civil Case No. 193 of 1993.

8. In the absence of a judgment on taxed costs and decree, there would be no basis on which the warrants of attachment were issued. See Njuguna Matiri & Company Advocates vs National Bank of Kenya Misc. Application No. 148 of 2014.

9. In the Rubo Kipngetich Arap Cheruiyot case, the court stated as follows and I concur that: "As far as the parties in this suit are concerned, a certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being executed. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a decree first."

10. Under Section 51 of the Advocate Act:

1. Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds,

documents and papers by an advocate shall be made in the matter of that advocate.

2.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 costs covered thereby, and he 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.

11.In Ndungu Githuka Advocate vs Geoffrey Moriaso Ole Mailoy (2019) eKLR, C. Mwita J stated as follows and I have no reason to differ that:

"Subsection (2) is clear that the certificate of costs once issued by the taxing officer is final unless set aside or altered by the court. The court may also make an order that judgment be entered in terms of the amount in the certificate of costs."

12.This requirement for the court to enter judgment on taxed costs was also restated in Lubullelah & Associates vs N. K. Brothers.

34. Earlier on, Odunga J (as he then was) in the case of **Thomas Malinda Musau & 2 others v Independent Electoral and Boundaries Commission & 2 others** [2019] eKLR, explained as follows, concerning execution process:

“33. As regards the issue whether it was necessary for a decree to be extracted before execution process could be put into motion, I agree that the view adopted by Ibrahim, J (as he then was) in Rubo Kimngetich Arap Cheruiyot vs Peter Kiprop Rotich [2006] eKLR is generally the correct legal position. In that case the learned judge held that: 'It is my view that a decree duly approved and signed had to be on record for any execution to take place, whether for the eviction, costs or otherwise. As far as the parties in a suit are concerned, a certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being 'executed'. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a decree first. It is true that the decree may not be necessarily or always contain the ascertained costs. Costs can be determined before a decree is issued or subsequently, after the decree has been drawn. However, for one to recover costs, there must be a decree. Any money awarded by court including costs is only payable under a decree.”

35. Applying the above principles to this case, I find and hold that the advocate/Applicant's application for mandamus order dated 8th December, 2025 is found to be premature and incompetently before this court and for this reason and the reason that the bill of costs which was taxed against the respondent Corporation was filed outside the limitation period, the application for mandamus is hereby dismissed with an order that each party

shall bear their own costs of these judicial review proceedings, the respondent having failed to appear and participate in the proceedings.

36. This file is closed.

37. I so order.

Dated, Signed and Delivered at Nairobi this 10th Day of February, 2026

**R.E. ABURILI
JUDGE**

ORIGINAL