

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS APPLICATION NO. E010 OF 2024

JOHN KABIRA KIONI
T/A KABIRA KIONI & CO. ADVOCATES.....

APPLICANT

VERSUS

MONARCH INSURANCE CO. LTD

RESPONDENT

RULING

1. This is a ruling over a miscellaneous application dated 7.7.2021. The Applicant sought relief that judgment be entered against the Respondent in the sum of Ksh. 127,620/= being the sum taxed and certified by the Deputy Registrar on 11.09.2024, and as per the certificate of taxation dated 16.12.2024, as due to the Applicant.
2. The application is stated to be brought under Section 55(2) of the Advocates Act but ought to have been brought under Section 51 (2) of the Advocates Act. The said Section 51(2) of the Advocates Act provides thus:

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.

3. After filing the Notice of Motion dated 7.7.2021, save for a notice of appointment dated 9.02.2026, there does not appear to be active participation of the Respondent. The costs were taxed by this court and there is no reference filed.
4. There are two modes of recovery of costs. In the case of *Kalonzo Musyoka & Paul M. Wambua (Practicing As Musyoka & Wambua, Advocates) v Rustam Hira (Practicing as Rustam Hira, Advocate) [2006] KEHC 3078 (KLR), H.P.G.*

Waweru J was held as follows:

Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has the discretion to enter judgment upon a certificate of taxation which has not been set aside or altered where there is no dispute as to retainer. This, in my view, is a mode of recovery of taxed costs provided by the law, in addition to the filing of suit, where such suit would be unnecessary because, one, the certificate of taxation has not been set aside or altered and, two, there is no dispute as to retainer. Unless there is any other matter as would require ventilation in a trial, what would be the necessity of filing suit? In my view the court would be entitled to enter judgment under section 51(2) even where there is no suit filed.

5. There is no allegation that the Advocate had no instructions to act in the matter for the client. The Applicant has done his part, serving the bill of costs and other processes. After filing the notice of appointment, nothing else was done. Consequently, notice of motion dated 7.7.202 is for allowing.
6. When does interest start to run? Though the taxation was concluded on 11.09.2024, it is not until 16.12.2024 that the certificate of costs was extracted. It is not clear when the certificate of costs was served. Therefore, the interest at 9% shall apply from 16.1.2025, 30 days after the date of the certificate of costs.

Determination

7. I make the following orders: -
- a) Judgment is hereby entered for the Applicant against the Respondent for Ksh. 127,620/=.
 - b) Interest thereon is from 16.1.2025, 30 days after the date of the certificate of costs.
 - c) 30 days stay of execution.
 - d) File is closed.

DELIVERED, DATED and SIGNED at **NYERI** on this **14th** day of **April, 2026**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of:-

Applicant present

Ms. Yinda for the Respondent

Court Assistant - Michael/Martin

ORIGINAL