

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT YERI
MISC. APPLICATION NO. E031 OF 2024

DUNCAN WAWERU MACHARIA

T/A WAWERU MACHARIA & CO ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

BEATRICE

WAMUTIGIRA

GITARI.....CLIENT/RESPONDENT

RULING

1. The Advocate/Applicant moved this Court by way of a Notice of Motion dated 26th June 2025, seeking the following orders:

a) THAT Judgment be and is hereby entered for the sum of Kshs 437,074 as per the certificate of costs dated 18th June 2025 plus costs and interest at court rates from 11th June 2025 until full payment.

b) THAT the costs of the application be paid by the Respondent to the applicant.

2. The Motion is premised on the grounds set out therein and supported by the depositions contained in the Supporting Affidavit sworn by **Duncan Waweru Macharia** on 26th June 2025.

3. Mr. Waweru deposes that he is the Applicant in the present matter and that he acted for the Respondent in *ELRC Petition No. 7 of 2019*, wherein she was the Petitioner against the Public Service Board, Kirinyaga County, and judgment was entered in her favour.
4. He contends that the Respondent failed to settle his legal fees, thereby necessitating the filing of an advocate-client bill of costs dated 24th October 2024. The bill of costs was subsequently taxed on 11th June 2025 at Kshs 437,074/-, and a certificate of costs was issued on 18th June 2025.
5. The Client/Respondent, **Beatrice Wamutira Gitari**, opposed the Motion through a Replying Affidavit dated 8th December 2025. Ms. Gitari admits having instructed the Applicant to pursue her claim against the Public Service Board, Kirinyaga County, but asserts that the parties had agreed that upon conclusion of the matter, the Applicant would deduct 25% of the award together with the costs of the suit.
6. Ms. Gitari further avers that following the issuance of the decree, the Applicant demanded Kshs 100,000/- to institute judicial review proceedings, which she contends was contrary to their agreement. She avers that it was her understanding that the Applicant was to undertake all necessary steps to secure

payment of the decretal sum without requiring any payment from her, as his fees were to be drawn from the agreed percentage pursuant to their agreement dated 7th June 2019.

7. She maintains that the said agreement was all-inclusive up to the payment of the award, no matter the avenues or means adopted by the Applicant.
8. It is her position that the application is premature, as she has not yet received payment of the awarded sum in accordance with their agreement. To this end, she urged the Court to dismiss the application with costs.
9. In a rejoinder, the Applicant filed a Further Affidavit dated 17th January 2026, contending that the issues raised by the Respondent have already been litigated and determined.
10. Mr. Waweru avers that no reference or appeal has been lodged against the taxation, and that the present Motion is merely a procedural step intended to facilitate execution of the decree.
11. He further deposes that the decree was not limited to a monetary award but also secured the Respondent's reinstatement to her appropriate job group without loss of benefits.

12. According to Mr. Waweru, following her reinstatement and resumption of salary, the Respondent became reluctant to pursue the matter against her employer, thereby hindering execution and recovery of the decretal sum.

13. He further contends that since obtaining judgment in her favour six (6) years ago, the Respondent has frustrated his efforts to execute the decree due to lack of cooperation, resulting in non-payment of his fees. He adds that the taxing officer concurred that this state of affairs was attributable to the Respondent.

Submissions

14. The Notice of Motion was canvassed by way of written submissions. The Applicant submitted that the advocate-client bill of costs had been duly taxed and a certificate of costs issued, and that no reference had been filed by the Respondent. He further argued that the issues raised in the Respondent's Replying Affidavit had previously been raised in her objection to the taxation and were duly considered by the Deputy Registrar prior to the delivery of the ruling on taxation. In support of his position, the Applicant relied on the case of ***Lubullelah & Associates Advocates v N.K Brothers Limited (2014) KEHC 8685 (KLR)***.

15. On her part, the Respondent contended that the taxing officer erred in the interpretation of the retainer agreement, thereby arriving at an erroneous decision in taxing the Applicant's bill of costs dated 24th October 2024 as drawn, notwithstanding her opposition.

16. She further submitted that the retainer agreement remained valid and binding upon the parties, having been reduced into writing and duly executed by both herself and the Applicant.

17. It was the Respondent's position that this Court has the discretion to determine the issues she has raised and to uphold the parties' agreement as set out in the retainer agreement.

Analysis and Determination

18. The Court has considered the Notice of Motion, the Respondent's Replying Affidavit, as well as the rival submissions, and evidently, the sole issue falling for determination is whether judgment should be entered against the Respondent/Client in terms of the Certificate of Costs dated 18th June 2025.

19. The record bears that the Advocate-Client Bill of Costs was taxed in favour of the Applicant in the sum of Kshs 437,074/-, and a Certificate of Costs was subsequently issued on 18th June 2025. Notably, the Respondent did not take

any steps to set aside or vary the said Certificate of Costs prior to the filing of the present Notice of Motion.

20. In opposing the Motion, the Respondent asserts that there existed an agreement between herself and the Applicant to the effect that the Applicant would prosecute the claim to conclusion and thereafter recover 25% of the award together with costs. She maintains that, in line with that agreement, the Applicant was to be paid from the decretal sum without requiring any payment from her. With tremendous respect to the Respondent, these are matters that ought to have been raised by way of a reference under Rule 11 of the Advocates Remuneration Order.

21. It is worth pointing out that **Section 51(2) of the Advocates Act** is explicit that a Certificate of Taxation, once issued by the Taxing Officer, is final unless set aside or varied by the Court.

22. The record further bears that the Respondent did raise the issue of the alleged agreement before the taxing officer, who found that she (Respondent) had failed to give instructions necessary to facilitate execution of the judgment and enable the Applicant to recover the agreed 25% instruction fees and costs. On that basis, the taxing officer held that the Respondent was estopped from relying on the said agreement.

23. Accordingly, the proper recourse available to the Respondent was to file a reference, rather than to reintroduce the same issue in these proceedings through a response to the application for entry of judgment. In the circumstances, this Court lacks jurisdiction to entertain the issue raised by the Respondent within the context of these adoption proceedings.

24. From the record, the Bill of Costs was taxed on 11th June 2025 and, in the absence of any challenge through the prescribed procedure, the Court finds that the sum certified by the Taxing Officer is due and payable to the Applicant.

25. In sum, the Notice of Motion dated 26th June 2025 is hereby allowed as follows;

- a) Judgment is hereby entered in favour of the Advocate/Applicant against the Client/Respondent for the sum of Kshs. 437,074.00.**
- b) Interest at court rates from the date of this Ruling until payment in full.**

DATED, SIGNED and DELIVERED at NYERI this 24th day of April 2026.

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STELLA RUTTO

JUDGE

In the presence of:

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|-------------------------------------|----------------------------|
| Mr. Waweru | for the Advocate/Applicant |
| Mr. Mutiso instructed by Mr. Kamuga | for the Respondent/Client |
| Ndati | Court Assistant |

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE