



**Yooshin Engineering Corporation v AIA Architects Limited (Commercial Case E055 of 2024) [2026] KEHC 4377 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4377 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
COMMERCIAL CASE E055 OF 2024  
F WANGARI, J  
MARCH 19, 2026**

**BETWEEN**

**YOOSHIN ENGINEERING CORPORATION ..... APPLICANT**

**AND**

**AIA ARCHITECTS LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion application dated 24<sup>th</sup> October 2024 under Section 51 of the *Advocates Act* and Order 51 (1) of the Civil Procedure Rules.
2. The Applicant seeks orders that the Certificate of Costs issued against the Respondent be adopted and converted into a judgment and decree of the court for the sum of Kshs. 513,425. The Applicant also requests that interest at the rate of 14% per annum be applied on the amount from the date of judgment until payment in full, and that the Respondent bears the costs of the application.
3. The application is premised on grounds that judgment was delivered on 7<sup>th</sup> July 2023 in Civil Appeal No. E074 of 2022, Yooshin Engineering Corporation v AIA Architects Limited and subsequently costs of the appeal were awarded to the Appellant.
4. The Applicant states that they filed and served the Respondent with a Bill of Costs dated 27<sup>th</sup> July 2023, which was not opposed, and a ruling on the taxation was delivered on 22<sup>nd</sup> November 2023. Following the ruling, the Applicant extracted and served the Certificate of Costs together with the ruling upon the Respondent and requested payment of the taxed costs. Despite several reminders to the Respondent and its counsel, no response was received and the costs remain unpaid.
5. The Applicant further states that the Respondent has neither filed a reference nor issued a notice of intention to challenge the taxation, and the time for doing so has already lapsed. As a result, the Respondent has not satisfied the taxed costs or made any proposal for settlement. The Applicant therefore seeks for the Certificate of Taxation to be adopted as a judgment of the court so as to enable



extraction of a decree and commencement of execution proceedings. The Applicant contends that the application has been filed in good faith, without undue delay, and that granting the orders sought would serve the interests of justice.

6. The Respondent filed a Replying Affidavit sworn on 28<sup>th</sup> March 2025 by Mohammed Munyanya, in his capacity as one of the directors and authorized to act on behalf of the Respondent. The Respondent argues that the Applicant's attempt to enforce the taxation ruling is flawed because the Applicant is allegedly invoking enforcement procedures applicable to the Court of Appeal in the High Court. The Respondent further contends that it was never served with the Bill of Costs, the Taxation Notice, or the ruling, thereby denying it the opportunity to participate in the taxation proceedings and causing prejudice.
7. The Respondent states that it has already filed an application seeking to set aside the taxation ruling, and therefore execution should not proceed while that challenge remains pending. Additionally, the Respondent argues that the Applicant failed to issue a formal demand before filing the present application, which demonstrates lack of good faith and amounts to procedural impropriety. The Respondent maintains that granting the application would prejudice its right to a fair hearing and undermine the integrity of judicial proceedings.
8. The application was canvassed by way of written submissions. The Applicant in their submissions dated 13<sup>th</sup> March 2025 argued that the Certificate of Costs should be adopted as the judgment and decree of the court since the taxed costs have not been settled and the Respondent has not made any effort to amicably settle or propose payment.
9. The Applicant contends that adopting the certificate as judgment is necessary to enable the extraction of a decree and the commencement of execution proceedings. The Applicant relied on Section 51 of the *Advocates Act*, submitting that a court may decline to enter judgment on a certificate of costs only where the certificate has been set aside, varied, or altered, or where the retainer is disputed. In support of this position, the Applicant cited *Delmonte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI)* [2022] KEELC 2842 (KLR) and *Lubulellah & Associates Advocates v N K Brothers Limited* (2014) eKLR.
10. The Applicant submitted that they are entitled to interest on the taxed costs at the rate of 14% per annum from 28<sup>th</sup> August 2024 in accordance with Rule 7 of the Advocates Remuneration Order. The Applicant relied on the decision in *Delmonte Kenya Limited v Meshack Kibe Muiruri & 3 Others* [2021] KEELC 914 (KLR) to support the claim for interest.
11. The Applicant stated that the Certificate of Costs was served on the Respondent on 28<sup>th</sup> August 2024, and the claim for interest was made through the Notice of Motion dated 24<sup>th</sup> October 2024, which was about two months after service. At the time of filing the application, the Respondent had neither settled the taxed costs nor attempted to do so. The Applicant therefore urged the court to award interest on the taxed costs together with the costs of the application.
12. The Respondent filed submissions dated 1<sup>st</sup> April 2025 and argued on whether the High Court has jurisdiction to enforce a certificate of costs arising from the Court of Appeal that, the Respondent argued that the proper forum for enforcement of the Certificate of Costs is the court that issued the original decision or conducted the taxation, namely the Court of Appeal of Kenya.
13. The Respondent contended that the present court lacks jurisdiction to adopt and enforce a Certificate of Costs arising from proceedings of a superior court. In support of this position, the Respondent relied on the decision in *Republic v Karisa Chengo & 2 Others* (2017) eKLR.



14. The Respondent submitted that it was not properly served with the Bill of Costs or the taxation ruling, arguing that the Applicant's claim of service is unsupported by credible evidence as required under the Court of Appeal Rules (2022) and the Civil Procedure Rules. The Respondent stated that the emails relied upon by the Applicant were sent to Oduk & Company Advocates, who were not on record for the Respondent at the time of the taxation proceedings.
15. Further, the Respondent contended that no affidavit of service demonstrates personal or physical service upon the Respondent's directors or authorized officers. According to the Respondent, the failure to effect proper service denied it the opportunity to participate in the taxation proceedings, thereby prejudicing its right to a fair hearing under Article 50(1) of *the Constitution* of Kenya. In support of this position, the Respondent relied on *Kenyatta International Convention Centre v Greenstar Systems Ltd (2018) eKLR*, where the court held that proper service is mandatory for a valid taxation.
16. The Respondent submitted that it has filed an application seeking to set aside the impugned taxation ruling, raising issues of lack of proper service, excessive taxation, and jurisdiction. The Respondent argued that it is a well-established legal principle that execution or enforcement proceedings should not proceed where a substantive challenge to the underlying decision is pending, as this would amount to an abuse of the court process.
17. In support of this position, the Respondent relied on *Equity Bank Limited v Westlink MBO Limited (2013) eKLR* and urged the court to maintain the status quo pending the determination of its application.
18. The Respondent submitted that the Applicant's failure to issue a formal demand renders the application premature. According to the Respondent, the emails relied upon by the Applicant were merely reminders sent to their counsel and the Respondent's general email address and did not meet the formality and specificity required of a demand letter under Kenyan legal practice. The Respondent argued that this omission demonstrates lack of good faith and procedural impropriety on the part of the Applicant.
19. Having considered the Notice of Motion application dated 24<sup>th</sup> October 2024, Replying Affidavit sworn on 28<sup>th</sup> March 2025 and submissions by the parties, the issues for determination are: -
  - a. Whether this court has jurisdiction to adopt and enforce the Certificate of Costs.
  - b. Who should bear the costs of the application.
20. On whether this court has jurisdiction, the Respondent argued that this court lacks jurisdiction to enforce a certificate of costs arising from proceedings before the Court of Appeal. Jurisdiction is fundamental and without it a court cannot proceed further.
21. The Supreme Court emphasized this principle in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 Others (2012) eKLR*, where the court held that:

“A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law ... Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power



upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

22. Where costs arise from Court of Appeal proceedings, including taxation conducted under the Court of Appeal Rules, the appropriate forum for enforcement is the Court of Appeal, because: -
  - a. The taxing officer who issued the certificate is part of the Court of Appeal.
  - b. Any challenge to taxation (reference) must be filed under the Court of Appeal Rules.
  - c. Execution should ordinarily issue from the same court that issued the decision.
23. This position has been recognized in several decisions emphasizing that execution proceedings should be taken in the court that issued the decree or order unless the law provides otherwise. In the present case, the application is brought under Section 51(2) of the *Advocates Act*, which provides that:

“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.”
24. However, this provision typically applies where the taxation arises from proceedings before that court, or where the advocate-client bill of costs has been taxed within the jurisdiction of that court. It does not automatically confer jurisdiction on the High Court to enforce taxation issued by the Court of Appeal. Therefore, if the Certificate of Costs arises from the Court of Appeal, enforcement should generally be sought before the Court of Appeal. The High Court may decline jurisdiction because it cannot supervise or enforce orders issued by a superior court of coordinate status.
25. This court therefore finds that it lacks jurisdiction to consider the application for adoption of the certificate of costs.
26. On costs, this court finds no reason to deny the Respondent costs. Costs of the Application awarded to the Respondent.

#### **Determination**

27. Accordingly, this court orders as hereunder;
  - i. The Notice of Motion application dated 24<sup>th</sup> October 2024 lacks merit and is hereby dismissed.
  - ii. Costs to the Respondent.

**DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 19<sup>TH</sup> DAY OF MARCH 2026**

.....

**HON. F. WANGARI**

**JUDGE OF THE HIGH COURT**

In the presence of: -

N/A by the Applicant

Ms. Nyambura Advocate h/b for Mr. Ochieng Advocate for the Respondent

Ms. Getrude, Court Assistant

