

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU

Civil Miscellaneous Application 70 of 2002

MUTHOGA GATURU & CO. ADVOCATE.....APPLICANT

VERSUS

GABRIEL WAWERU WANJOHI

T/A MOUNTAIN ROCK HOTEL.....RESPONDENT

RULING

The applicant's costs against the respondent were allowed by the Deputy Registrar in the sum of Kshs.89,126.85 and a Certificate of Taxation issued. The respondent has not settled the taxed costs hence this application which seeks that judgment in the aforesaid sum of Kshs. 89,126.85 be entered.

Despite service of the hearing notice, the respondent or his counsel did not attend to canvass their notice of preliminary objection in which it is contended that this application is incompetent, defective and premature and ought to be struck out. The applicants' averments which have not been challenged are to the effect that they were instructed by the respondent on 6th February, 1997 in Nakuru C.M.C.C.No.1558 of 1996. Until 13th February, 1998 when the respondent withdrew instructions, the applicants had performed their part of the brief. That the respondent has failed/refused to pay their professional fees.

The applicants filed a bill of costs which was taxed at Kshs. 89,126.85. The resultant Certificate of Taxation has not been set aside and the costs have not been settled. The application is expressed to be brought under **section 51(2)** of the **Advocates Act** (the Act), **paragraph 7** of the **Advocates (Remuneration) (Amendment) Order (L.N. 550 of 1997** and **Order 50 rule 1** of the **Civil Procedure Rules**.

Section 51(2) aforesaid provides that:

“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 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.”

The “*court*” as used in the Act means the High Court.

The Taxation Certificate, a copy of which is annexed to the application, is *prima facie* evidence that the bill was taxed in the sum shown on it. That amount is final unless set aside or varied. No evidence has been presented that the certificate has been set aside or varied by this court.

The application is allowed with costs in terms of prayer 1 of the Notice of Motion dated 13th July, 2006.

Dated, Signed and Delivered at Nakuru this 7th day of May, 2010.

W. OUKO
JUDGE