



**Freedom Limited v Mbarak (Environment & Land Case
358 of 2016) [2023] KEELC 204 (KLR) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 204 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 358 OF 2016
NA MATHEKA, J
JANUARY 24, 2023**

BETWEEN

FREEDOM LIMITED PLAINTIFF

AND

OMAR AWADH MBARAK DEFENDANT

RULING

1. The application is dated 2nd September 2022 and is brought under Section 51 (2) of the [Advocates Act](#) Order 51 of the Civil Procedure Rules and all enabling provisions of the Laws of Kenya
 1. That the Judgement be entered on the basis of the certificate of Taxation dated 19th August,2022 in the sum of Kshs. Three Million Four Hundred and Twenty Three Thousand Eight Hundred and Ten (Kshs.3,423,810.00)
 2. The costs of this Application be provided for.
2. It is based on the grounds that the Plaintiff/Applicant's Advocate is seeking for Judgment for Taxed costs which have neither been set aside nor challenged by way of reference against the taxing master decision.
3. The Respondent raised a preliminary objection on the grounds that this Honourable Court lacks jurisdiction to hear and determine the said application as it offends the provision of Section 51 (2) of the [Advocates Act](#) since the taxation was not in relation to Advocate-Client Bill of Costs. The said section provides:

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.”

4. The Plaintiff's Notice of Motion Application dated 2nd September, 2022 and the suit are therefore incurably defective, bad in law and is incompetent and ought to be struck out with costs.
5. I have considered the Preliminary objection and the submissions therein. I concur with the Defendant that this is a party to party bill of costs and the court cannot enter a second judgement. The Applicant ought to follow the normal execution procedures through the Deputy Registrar. The court cannot issue a judgement on party to party bill of costs as stated above. I find the Preliminary objection is merited and I strike out the application with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF JANUARY 2023.

N.A. MATHEKA

JUDGE

