



REPUBLIC OF KENYA



**KENYA LAW**  
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**E.M Juma & Ombui Advocates v Lelo & another (Miscellaneous Application  
E148 of 2021) [2025] KEHC 5310 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5310 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E148 OF 2021  
HI ONG'UDI, J  
APRIL 29, 2025**

**BETWEEN**

**E.M JUMA & OMBUI ADVOCATES ..... APPLICANT**

**AND**

**FRANCIS K. LELO ..... 1<sup>ST</sup> RESPONDENT**

**LAIKIPIA UNIVERSITY COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In the Notice of motion dated 16<sup>th</sup> January 2023 the applicant herein prays for the following orders;
  - i. That this honourable court be pleased to adopt the Certificate of Costs issued on 24<sup>th</sup> November 2022 in respect of the taxation order made on 20<sup>th</sup> September 2022 for the sum of Kshs, 3,073,255/= as Judgement and Decree of this court.
  - ii. That an interest rate at 14% per annum be awarded on the principle amount from the date of filing of the bill for taxation on 17<sup>th</sup> August 2020.
  - iii. That the costs this application be borne by the respondents.
2. The application is premised on the grounds on its face as well as the affidavit of one of the applicant's partners one Bernard O. Ombui sworn on even date. He deponed that they filed their Client Bill of Costs on 17<sup>th</sup> August 2020 as Miscellaneous Civil Application No. 148 of 2021 against the respondents. The same was taxed on 20<sup>th</sup> September 2022 and allowed as against the respondents for a sum of Kshs. 3,073,255/=. Further, that the Certificate of Costs was issued on 24<sup>th</sup> November 2022 by the Hon. N. Makau. However, the respondents refused and/or declined to settle the said certificate of cost, making the issuance of the orders sought herein necessary. He urged the court to adopt the said Certificate of Costs as Judgment of court in this matter.



3. In response, the respondents filed a replying affidavit dated 24<sup>th</sup> March 2025 and sworn by their legal officer, Imelda Wanjau. She averred that they filed an application dated 26<sup>th</sup> March, 2024 seeking enlargement of time to file a reference. That this court in the ruling delivered on 4<sup>th</sup> February, 2025 dismissed the said application. Further, that they had filed before this court a notice of appeal dated 18<sup>th</sup> February 2025 together with a request of proceedings to enable them file an appeal against the said ruling. She added that should the court proceed to allow the applicant's application the appeal would be rendered nugatory. She urged the court to halt the process of adopting the certificate of costs until the appeal filed is concluded.
4. The application was to be disposed of by way of written submissions, but the respondents' counsel informed the court that they would not be filing any submissions.
5. The applicant filed submissions dated 19<sup>th</sup> May 2023. Counsel gave a brief background of the case and submitted that since the certificate of costs had not been set aside nor any orders of stay of the application or further proceedings sought, their application should be allowed. He placed reliance on section 51(2) of the *Advocates Act* which states as follows:

“The Certificate of the Taxing Officer by whom a 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 retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

### **Analysis and determination**

6. I have considered the application, affidavits by the parties together with the submissions and authorities filed by the applicant. I find the issue for determination to be whether the certificate of costs dated 24<sup>th</sup> November 2022 issued by the taxing officer should be adopted as a judgement of the court, or not.
7. The application has been brought under the provision of Section 51(2) of the *Advocates Act* which has already been cited above.
8. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate* [2006] eKLR, the court held as follows;

“Sub-section (2) of section 51 of the *Advocates Act* gives the court the discretion to make such order in relation to a certificate of taxation that has not been set aside or altered as the court 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.....

.....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. I so hold.”



9. Further, in *In Lubulellah & Associates vs N. K. Brothers Limited* (2014) eKLR the court observed as follows:

“The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no reference against the ruling or there has been a ruling and a determination made and not set aside/and or altered, no other action would be required from the court save to enter judgement. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the applicant against the Respondent her for the taxed sum indicated in the certificate of taxation that was issued on 25<sup>th</sup> November 2012.”

10. The above being the legal position, all that is required of this court to confirm is that a certificate of costs was duly issued and that the respondents were served. I have noted that annexed to the application as EMJ ‘02’ is a signed certificate of costs. I have also perused the affidavit of service dated 31<sup>st</sup> January 2023, which indicates that personal service was effected upon the 1<sup>st</sup> respondent on even date at 11.48 am at his home at Laikipia University located along Nakuru-Nyahururu road. In addition, there is no Reference against the ruling by the Hon. Nancy Makau nor any decision setting aside nor revising the said ruling.

11. The respondents were vide the Ruling by Justice Chemitei dated 16<sup>th</sup> November, 2023 given time to file a Reference but the same was never complied with. It is true a Notice of Appeal dated 18<sup>th</sup> February, 2025 has been filed in the Court of Appeal Nakuru. That in itself does not operate as stay. Despite being aware of the pending Notice of Motion dated 16<sup>th</sup> January, 2023 the respondents did not seek stay of the same either before this court or the Court of Appeal. This matter has been pending before this court for long and it is only fair that the same be concluded.

12. Being satisfied that the two requirements under section 51 of the *Advocates Act* have been met, I am satisfied that the applicant dated 16<sup>th</sup> January, 2023 has merit and the same is allowed in its entirety with costs to the applicant.

13. The certificate of costs issued

14. on 24<sup>th</sup> November, 2022 in respect of the taxation order made on 20<sup>th</sup> September, 2022 for the sum of Ksh 3,073,255/= is adopted as a Judgment and decree of this court plus interest as prayed.

15. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF APRIL, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**

**JUDGE**

