



K.M Mburu & Associates v Javisapa Enterprises Limited (Miscellaneous Case E1006 of 2023) [2025] KEHC 12381 (KLR) (Civ) (28 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12381 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CASE E1006 OF 2023
FR OLEL, J
AUGUST 28, 2025

BETWEEN

K.M MBURU & ASSOCIATES APPLICANT

AND

JAVISAPA ENTERPRISES LIMITED RESPONDENT

RULING

A. Introduction.

1. The application before this court for determination is the Notice of Motion Application dated 28th January, 2025 brought pursuant to provisions of Section 1A, 1B, & 3A of the *Civil Procedure Act*, and Order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of law. The Applicant seeks for Orders that;
 - a. That this Honourable court be pleased to enter judgment for the Applicant for Kenya shillings Two hundred and five thousand, three hundred and thirty-eight only (Kshs. 205,338/=) as per the certificate of Taxation issued herein on 14th November, 2024. Together with interest at 16% from 12th November 2024.
 - b. That the costs of this Application be provided for.
2. This application is supported by the grounds made on the face of the said application and the supporting affidavit of one Mwangi Mburu dated on the even date. He depones that he is a practicing advocate, and his firm did act for the respondent in MCC/3907/2018, Joe Mwanthi & Co Advocates vs Javisapa Enterprises Limited, where they managed to obtain a favorable judgment, culminating in the dismissal of the said suit. Subsequently, his firm did file an Advocate-Client bill of costs dated 28th



November, 2023 and had it taxed at Kshs. 205,338/=. A certificate of cost was thereafter issued for the said Amount.

3. To the best of his knowledge, the respondent had not challenged the taxation carried out in any manner and thus urged the court to adopt the certificate of costs as a judgment of this court pursuant to provisions of Rule 51 of the *Advocates Act*.
4. The respondent opposed this Application through her replying affidavit dated 29th May, 2025 and deponed that her company and the Applicant/Advocate were embroiled in various suits concerning the advocate's costs, some of which had been determined, while others were still undergoing the taxation process. Specifically, in Machakos HCC Misc App No E242 of 2023, the taxing master had found that the advocate owed her company a sum of Kshs. 1,031,150/= and urged this court to set off the sums owed under this certificate of costs from the sum the advocate was adjudged to owe her company.
5. The respondent did submit that her proposal was just and would mitigate against any future expense her company would be forced to incur, should the advocate opt to enforce the decree that may issue herein.

B. Analysis & Determination

6. I have carefully considered the Application, its Supporting Affidavit, and the Respondent's Replying Affidavit. The only issue for determination is whether the certificate of taxation dated 14th November, 2024, should be converted into judgment and/or whether the same should be set off as against the decree issued in favour of the respondent in Machakos HCCC MISC No. E242 of 2023.
7. The respondent does not dispute the taxed amount and/or retainer. Where the same is not disputed, Section 51(2) of the *Advocates Act* comes into play and 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 judgement be entered for the sum certified to be due with costs”.

8. The prayers sought herein are therefore merited and should be granted. The respondent, on the other hand, did pray for an order of set off, against what is due to each party. Though the said request is logical and merited, it should have been made through a formal application for consideration by this court. In the alternative, after all the advocate-client bills of costs have been taxed, the parties can undertake a reconciliation of the fee owed and set off the same against the earlier payments made to the advocate herein.

C. Disposition

9. Judgment is therefore entered for the Advocate/Applicant, as per the certificate of taxation dated 14th November, 2024 in the sum of Kshs. 205,338/= plus interest at 14% from 14th November, 2024 until the date of payment in full.
10. The costs of this Application, assessed at Kshs. 20,000/= too is awarded to the Advocate/Applicant.
11. It is so ordered.

READ, SIGNED AND DELIVERED VIRTUALLY AT KIAMBU ON THIS 28TH DAY OF AUGUST, 2025.



FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 28TH DAY OF JULY, 2025.

In the presence of: -

.....Appellant

.....Respondent

.....Court Assistant

