



**Barasa v Murunga (Civil Miscellaneous Application E041 of 2022)  
[2024] KEHC 4544 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4544 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CIVIL MISCELLANEOUS APPLICATION E041 OF 2022**

**REA OUGO, J**

**APRIL 26, 2024**

**BETWEEN**

**DIDMUS WEKESA BARASA ..... APPLICANT**

**AND**

**SULEIMAN KASUITI MURUNGA ..... RESPONDENT**

*(Being an application for adoption and enforcement of the  
Certificate of Costs issued by the Taxing Officer on the 17<sup>th</sup>  
day of September 2021 in Bungoma Election Petition No. 2 of 2017)*

**RULING**

1. This application in the Notice of Motion dated 7<sup>th</sup> March 2022 was filed by the applicant. The application is brought under section 51 of the *Advocates Act*, Article 159 (2) of the *Constitution* and Order 51 Rule 1 of the *Civil Procedure Rules*. The applicant seeks the following orders:
  - a. The Certificate of Costs issued by this Court on 17<sup>th</sup> September 2021 in Bungoma High Court Election Petition Number 2 of 2017 be adopted and enforced as the judgment of this Court;
  - b. The Court issue any other order that the Court may deem fit and expedient to grant; and
  - c. The Costs of the Application be provided for.
2. According to the grounds on the face of the application, the applicant contends that he has a valid certificate of costs in Bungoma High Court Election Petition No. 2 of 2017 which has not been varied and/or set aside. Despite being duly served with the Certificate of Costs, the Respondent has refused, neglected and/or omitted to pay the Bill of Costs awarded to the Applicant by the Taxing Officer. The applicant is now desirous of enforcing the said certificate of costs as the judgment/decree of this court to realize the fruits of the taxing officer's judgment. It was advanced that the court has unfettered jurisdiction under section 51 of the *Advocates Act* to adopt and enforce the taxing officer's certificate of



- costs. It was the applicant's case that he stands to suffer irreparably as the respondent has demonstrated unwillingness to settle the awarded costs for which he has neither applied to this court to vary and/or set aside.
3. The applicant in his supporting affidavit dated 7/3/2022, avers that he was the 3<sup>rd</sup> respondent in Bungoma High Court Election Petition No. 2 of 2017 in which the respondent herein had petitioned to have the applicant's election as the member of parliament for Kimilili Constituency declared invalidated. Pursuant to the judgment of the Court rendered on 20/02/2018 the court dismissed the petition with costs. Subsequently, he filed a party and party bill of costs dated 25/6/2018 and vide the judgment of the taxing officer issued on 10/7/2019, his bill of costs was assessed at Kshs 3,635,440/-. He applied for a certificate of costs issued by the deputy registrar on 17/9/2021. Despite serving the respondent with the said certificate of costs, the respondent has refused to pay the applicant the awarded costs. The appellant is desirous of enforcing the certificate of costs as the judgment/decree of this court to enable him to realise the fruits of the judgment bill of costs. He advanced that this court has unfettered jurisdiction under section 51 of the *Advocates Act* to adopt and enforce the taxing officer's certificate of costs.
  4. The respondent who filed its replying affidavit dated 15/12/2023 opposed the application. He avers that he was the petitioner in Election Petition No. 2 of 2017 and lost in the Petition and the trial Judge awarded costs at Kshs 3,000,000/-. The applicant filed a reference and Riechi J ordered those costs be pegged as ordered by the trial judge at Kshs 3,000,000/-. The assessment by the Deputy Registrar was reviewed.
  5. The applicant then engaged services of Ochieng Walukwe & Co. Advocates who without leave came on record, irregularly commenced execution, and received full payments in the certificate of taxation plus attaching the respondent's motor vehicle Toyota Prado KBX 005L. The respondent deposed that what he has paid directly together with the value of the motor vehicle has incurred a loss of over Kshs 10,000,000/- He avers that he looked at the affidavit samples in the earlier proceedings by Walukwe Advocates and those in the current proceedings and the deponent is the same yet they purport to one common decree over the same costs. He contends that there is mischief in what is being pursued as the law does not allow the execution of the same decree twice.
  6. The applicant filed a further affidavit and averred that he has not received any payments from the respondent in settlement of the Certificate of Costs issued by the Deputy Registrar on 17/9/2021 hence necessitating the application before the court. The letter allegedly issued by Jenks Auctioneers dated 16/8/2022 does not refer to the motor vehicle Toyota Prado KBX 005L and there was no cheque issued to the applicant following the public auction. The respondent has not provided any proof of payments made directly to the applicant in satisfaction of the Certificate of Costs. He explained that the replying affidavit sworn by him on 16/1/2020 was in support of an application for review of the decision of the Deputy Registrar issued on 25/10/2018 and is not in support of the execution of the certificate of costs.
  7. At the hearing of the application, the parties made oral submissions. Counsel for the applicant, Mr. Lorot holding brief for Mr. Kiplagat, submits that the application seeks to adopt a certificate of costs dated 17.9.2021 as a judgment of the court. He referred to section 51(2) of the *Advocates Act*. He submits that the certificate has not been challenged and that the respondent did not show any proof that he made any payment.
  8. Mr. Sichangi, counsel for the respondent, submitted that this matter was taken up by the firm of Ochieng Walukwe who acted for the applicant up until execution. The respondent's vehicle was attached and auctioned. There is no provision in law that you can execute a certificate of costs twice.



The applicant isn't denying that he instructed the firm of Ochieng Walukwe and neither has filed a notice of change of advocate.

9. In a rejoinder, Mr. Lorot argued that the issue of representation hasn't been an issue and conceded that his client instructed Ochieng Walukwe advocates.

## **ANALYSIS AND DETERMINATION**

10. I have carefully considered the pleadings, the evidence on record, and the submissions by the parties. The application before the court is premised on section 51 of the [Advocates Act](#). It provides:

“General provisions as to taxation

- (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
- (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.”

11. The applicant submits that the application is premised under section 51 (2) of the [Advocates Act](#) yet a plain reading of the section reveals that it is for recovery of advocate-client costs. The court in [Tom Ojienda & Associates v Nairobi City County](#) (Miscellaneous Application E620 of 2019) [2022] KEHC 86 (KLR) (Commercial and Tax) (4 February 2022) (Ruling) held as follows:

“The procedure provided in Section 51(2) of the [Advocates Act](#) aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:

- a.the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
- b.the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
- c.there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate.”

12. It is not in dispute that the costs in question in the application are party and party costs and the applicability of section 51(2) of the [Advocates Act](#) does not arise.

13. Consequently, the Notice of Motion dated 7<sup>th</sup> March 2022 is unmeritorious and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 26<sup>TH</sup> DAY OF APRIL 2024.**

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**R.E. OUGO**

**JUDGE**

**In the presence of:**



**Applicant - Absent**

**Mr. Sichangi -For the Respondent**

**Wilkister -C/A**

