



Kariuki & Kayika Advocates v Monarch Insurance Company Limited (Miscellaneous Civil Application E019 of 2023) [2024] KEHC 12741 (KLR) (16 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12741 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
MISCELLANEOUS CIVIL APPLICATION E019 OF 2023
AK NDUNG’U, J
OCTOBER 16, 2024**

BETWEEN

KARIUKI & KAYIKA ADVOCATES APPLICANT

AND

THE MONARCH INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The application before court is dated 20th February, 2024.
2. The orders sought are:-
 - a. That judgment be entered in favour of the Applicant against the Respondent for the sum of Kshs. 122,350.00 being the certified costs due to the Applicant as against the Respondent.
 - b. That the Respondent do pay to the Applicant interest on the taxed sum from the date of filing of this Application, until payment in full.
3. It is based on grounds that:
 - a. The Advocate – Client costs due to the Applicant herein have been taxed at Kshs. 122,350.00 in favour of the Applicant against the Respondent and a certificate of taxation issued to that effect.
 - b. That Respondent has neglected, refused and/or failed to settle the taxed costs.
 - c. There is no dispute that the Respondent retained the Applicant herein as their advocate in respect of which advocate – clients’ costs were taxed herein.
 - d. It is only fair and just in the circumstances that judgment be entered for the amount of Kshs. 122,350.00 being the sum certified to be due to the Applicant herein as against the Respondent.



4. It is supported by the affidavit of KIRUKI MUTWIRI. It is deponed that:
1. That the Respondent instructed the firm of Kiruki & Kayika Advocates to act for the Defendant in Nanyuki CMCC No. 1 of 2022 Michelle Nyaguthii Vs John Mukiri.
 2. That thereafter, the Respondent failed to pay legal fees, thereby necessitating the filing of a bill of costs herein for taxation and the same was taxed on 27th November, 2023 in the sum of Kshs. 122,350.00 and a certificate of taxation issued to that effect.
 3. That the Respondent has refused, failed and/or neglected to settle the taxed costs.
 4. That the certificate of taxation has not been appealed against, set aside or altered by the Respondent.
 5. A certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being executed. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a decree first.
 6. Section 51 of the Advocates Act states;
 - (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.
 7. In our instant suit, the certificate of costs has not been varied or set aside through any legally recognized procedure. It is final. The application has not elicited any response from the Respondent. The application has merit and is necessary to open the avenue for the applicant to execute for the costs duly awarded.
 8. With the result that the application succeeds and is allowed. I make the following orders;
 - a. That judgment be and is hereby entered in favour of the Applicant against the Respondent for the sum of Kshs. 122,350.00 being the certified costs due to the Applicant as against the Respondent.
 - b. That the Respondent do pay to the Applicant interest on the taxed sum from the date of filing of this Application, until payment in full.
 - c. No orders as to costs

DATED SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF OCTOBER 2024.

A.K. NDUNG'U

JUDGE

