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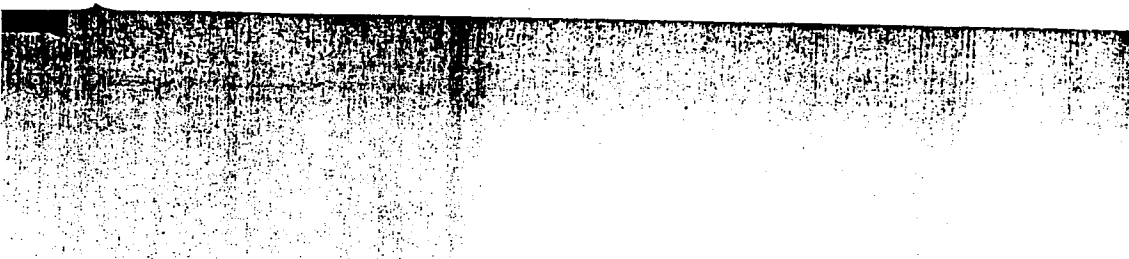
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Oruko and Associates v Brollo Kenya Ltd

MILIMANI COMMERCIAL COURTS OF KENYA AT NAIROBI
 NYAMU J

Date of Ruling: 14 MARCH 2003

Case Number: 1465/02

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SUMMARISED BY A MWANZIA

[1] *Advocate - Costs - Recovery - Certificate of taxation issued - Whether certificate final as to entitle applicant to judgment - Whether an action for recovery necessary where there is no undisputed retainer - Sections 45(6), 48 and 51(2) - Advocates Act (Chapter 16).*

Editor's Summary

The Applicant, a firm of advocates, filed application in court seeking judgment for costs pursuant to section 51(2) of the Advocates Act (Chapter 16) and an order that they be at liberty to execute against the Respondent. The Appellants had an advocate client bill of costs taxed by the deputy registrar, and on the basis of certificate of taxation brought the application. The Applicants contended that a certificate of the taxing master was final and they were thus entitled to judgment under section 51(2) of the Advocate Act. The Respondents opposed the application contending that recovery should have commenced by way of a suit pursuant to section 48 of the Advocates Act.

Held - Under section 51(2) of the Advocates Act, a certificate of the taxing master is final, but only as to the amount of costs.

An action for recovery ought to have been commenced as provided in section 48 of the Advocates Act since there was no undisputed retainer under section 45(6) of the Act. *Sharma v Uhuru Highway Development Limited* [2000] LLR 2404 (CAK) applied.

Application dismissed.

Case referred to in ruling

("A" means adopted; "AL" means allowed; "AP" means applied; "APP" means approved; "C" means considered; "D" means distinguished; "DA" means disapproved; "DT" means doubted; "E" means explained; "F" means followed; "O" means overruled)

Sharma v Uhuru Highway Development Limited [2000] LLR 2404 (CAK) - AP

Ruling

NYAMU J: The Applicant which is a firm of advocates has filed a notice of motion dated 20 December 2002 seeking two substantive orders:

(1) That judgment for costs be entered in the Applicant favour pursuant to section 51(2) of the Advocates Act (Chapter 16).

(2) That the Applicant be at liberty to execute against the Respondent.

The application is supported by an affidavit sworn on 20 December 2002 which attaches a certificate of taxation in the sum of KShs 46 975. This was a certificate of taxation issued after an advocate client bill of costs had been taxed by the taxing master or deputy registrar.