



**Musyoka Murambi and Associates v Concorde Savings and Credit  
Cooperative Society Limited (Miscellaneous Civil Application E844 of 2021)  
[2024] KEHC 10229 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10229 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E844 OF 2021  
PM MULWA, J  
AUGUST 15, 2024**

**BETWEEN**

**MUSYOKA MURAMBI AND ASSOCIATES ..... ADVOCATE**

**AND**

**CONCORDE SAVINGS AND CREDIT COOPERATIVE SOCIETY  
LIMITED ..... CLIENT**

**RULING**

**Introduction and Background**

1. On 28<sup>th</sup> July 2022, the court's Deputy Registrar delivered a ruling in which she certified the sum of Kshs. 362,840.00 as due to the Advocates from the Client. This sum was in respect of a Bill of Costs dated 12<sup>th</sup> November 2021 filed by the Advocates in respect of a suit in Co-operative Tribunal Case (CTC) No. 754 of 2019; *Concorde Savings and Credit Cooperative Society Limited v Janette Rubadiri & 8 Others*.
2. The Advocates have now filed the Notice of Motion dated 20<sup>th</sup> September 2022 brought under Section 51(2) of the *Advocates Act*, Sections 1A, 1B & 3A of the *Civil Procedure Act*, order 22 rule 1(b), order 23 rule 1 & 2 and order 51 rule 1 of the *Civil Procedure Rules*, 2010 seeking to convert the Certificate of Costs dated 22<sup>nd</sup> August 2022 for the certified sum into a decree and judgment of the court together with interest at the rate of 14% per annum from 28<sup>th</sup> July 2022.
3. The application is supported by the affidavit of Cynthia Omuya, an associate advocate in conduct of this matter, sworn on 20<sup>th</sup> September 2022. It is opposed by the Client through the grounds of objection dated 3<sup>rd</sup> October 2022, the replying affidavit sworn by the Client's Chief Executive Officer,



James Odera on 4<sup>th</sup> October 2022 and the supplementary grounds of objection dated 13<sup>th</sup> January 2023.

4. The Client filed the Chamber Summons dated 3<sup>rd</sup> October 2022 made under Paragraphs 11 and 12 of the [Advocates Remuneration Order](#) (the ARO) and Order 42 Rule 6 of the [Civil Procedure Rules](#). It seeks, *inter alia* stay of execution of the certificate of costs issued herein pending the hearing and determination of the reference, that the court do extend time for filing the reference, that the court reviews or sets aside the ruling and certificate of costs, that the court reverses or tax off the taxed costs found to be due to the Advocates or alternatively the Bill of Costs be remitted with the appropriate directions for re-taxation and that this application be admitted as the reference against the taxation proceedings.
5. The Chamber Summons application is supported by the affidavit of Joseph Njoroge Mbugua, an Advocate in conduct of this suit, sworn on 3<sup>rd</sup> October 2022 and the supplementary supporting affidavit of James Odera sworn on 30<sup>th</sup> September 2022. This application is opposed by the Advocates through the replying affidavit of Wakoli Namuyemba Joan, an advocate, sworn on 17<sup>th</sup> January 2023.
6. The two applications which are the subject of the court's determination, were canvassed by way of written submissions. For ease of reference, I propose to first deal with the Client's application, as my finding thereof will determine whether or not I will consider the Advocates' application.

#### **Client's Chamber Summons dated 3<sup>rd</sup> October 2022**

7. The Client avers that the Deputy Registrar/Taxing Officer failed to appreciate that there was no advocate-client relationship between the parties to the said taxation and that she awarded to the Advocates the taxed costs without regard to the Client's objections that the services the Advocates claimed to have rendered were indeed rendered by a different firm of advocates, that is, M/s Mwangi Wahome & Company Advocates.
8. It was further averred that no consideration exists to justify the award made to the Advocates by the Taxing Officer in respect of the taxed costs of Kshs. 360,840.00 and it asserts that the issue about retainership of the Advocates by the Client is in dispute.
9. The Client contends that on 29<sup>th</sup> July 2022 their firm applied and paid for reasons of the ruling. A copy of the same was only availed and collected on 27<sup>th</sup> September 2022.

#### **Advocates' Response**

10. The Advocates aver that the Client's application is misconceived, bad in law and tainted with false statements and meant to deny them fair justice as the legal fees for representing the Client in the suit is due. That the same is not tenable as the Client has failed to sufficiently demonstrate the reason for delay in filing the application.
11. The Advocates submit that the reasons for the ruling were on the face of the decision and it was futile to expect the Deputy Registrar to furnish further reasons and thus, nothing barred the Client from filing a reference within the prescribed time. The Advocates believe that the Client's application is an afterthought and there is no demonstration of any substantial loss likely to be suffered by them.

#### **Analysis and Determination**

12. Paragraphs 11 and 12 of the [ARO](#) outline the timelines and procedures to be followed once a party seeks to object to a Taxing Master's decision as follows:



- (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
  - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
13. The Court of Appeal, in *Mario Rossi v Salama Beach Hotel Limited* (Malindi) Civil Application No. 50 of 2016 [2018] eKLR stated that timelines fixed by statute or subsidiary legislation made thereunder are of essence since they are designed to achieve an intended purpose and outcome, that is, not only do they ensure procedural order and certainty within the judicial system, but also advance a just, uniform and efficient dispensation of justice and it is for that reason that courts advocate for strict compliance with such time lines.
  14. It is not in dispute that the ruling was delivered on 28<sup>th</sup> July 2022. The Taxing Officer titled the same as “ruling on the Advocate and Client Bill of Costs and Reasons for the Ruling”. However, in as much as the ruling contained reasons for the same as aforementioned, the Client still wrote a letter to the court on 29<sup>th</sup> July 2022 seeking to be supplied with “...reasons for the said determination within 14 days as per the *Advocate Remuneration Rules.*” It was only after the court supplied it with these “reasons” that it was able to file the present application.
  15. In my view, since the Deputy Registrar had indicated her reasoning in the ruling, the Client was not required to seek further reasons (See *Abmednasir Abdikadir & Co Advocates v National Bank of Kenya Limited (2)* [2006] 1 EA 5, and *National Oil Corporation Limited v Real Energy Limited & another* HC JR Misc. Civil Application No.366 of 2015 [2016] eKLR).
  16. Nevertheless, once a party applies for reasons of the ruling, it is incumbent upon the Taxing Officer to timeously respond to the said request and inform the party that the reasons are contained in the ruling. In the instant case, the argument by the Client that it only got a response from the court on 27<sup>th</sup> September 2022 is valid and sufficiently explains the delay in filing the reference. Furthermore, the delay of just over two months is not inordinate for the court not to exercise its discretion in the Client’s favour. (See *John Muturi Mbijiwe t/a Bealine Kenya Auctioneers v ABSA Bank Kenya PLC* (Misc. Application E066 of 2022) [2023] (Commercial and Tax).
  17. Both parties have argued on the merits of the intended reference in their submissions and I will proceed and determine the same in the interest of justice and completeness. The Client is challenging the ruling on the grounds that there was no advocate-client relationship between the parties, that the Taxing Officer committed an error of principle in enhancing the taxed costs of Kshs. 208,000.00 by 50% provided for under Part B of the Schedule against the provisions of the *ARO* and that she erred in awarding 16% VAT on all items of disbursement named in the Bill of Costs even though some items of disbursement had 16% VAT already paid thus making a double payment thereof.
  18. The parties agree that on a reference to the court from the decision of the Taxing Officer, the court will not normally interfere with the exercise of discretion by the Taxing Officer unless she erred in principle in assessing the costs. That where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases.



19. There is no doubt that the Client, in its pleadings and submissions before the Taxing Officer disputed the existence of an advocate-client relationship or retainer agreement between the parties. The Advocates responded by stating that they were instructed on 16<sup>th</sup> December 2019, but that they instructed the firm of Mwangi Wahome & Company Advocates to hold their brief because of conflict of interest since they were conducting various land transactions with the Client at the time the suit was being filed.
20. That the firm of Mwangi Wahome and Company Advocates indeed prepared some of the pleadings in the suit and took part in the court proceedings but would update the Advocates on the outcome. That once the land transactions were finalized, they proceeded to file a notice of change of advocates dated 19<sup>th</sup> May 2021 and formally took over the matter.
21. I note from the ruling of the Taxing Officer that she did not consider the contestation by the Client. The Court of Appeal, in *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited* [2017] eKLR held that:

“...the issue whether an Advocate/client relationship exists in taxation of a Bill of costs between an Advocate and his or her client is core. The jurisdiction is conferred on the Taxing Officer by law from the *Advocates Act* and the Order and the nexus between the advocate and his or her client is the Advocate/client relationship which springs from instructions by the client to the Advocates. Absent of such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.”
22. The appellate court went to further state that a taxing officer has jurisdiction to determine an allegation that the advocate-client relationship does not obtain in taxation and that such an allegation must be determined at once.
23. In my view, it was an error of principle for the Taxing Officer to determine the Bill of Costs without first determining whether or not she had jurisdiction to tax the same owing to the challenge by the Client that there was no advocate-client relationship. As a consequence, the ruling on the taxed Bill of Costs and the subsequent Certificate of Taxation cannot stand until the question of whether there existed an advocate-client relationship is determined.

### **Conclusion and Disposition**

24. In the foregoing, I find that:
  - a. The Client’s Chamber Summons dated 3<sup>rd</sup> October 2022 has merit and is allowed. As a consequence, the impugned ruling of the Taxing Officer dated 28<sup>th</sup> July 2022 and the subsequent certificate of taxation dated 22<sup>nd</sup> August 2022 are hereby set aside.
  - b. The Advocates’ Notice of Motion dated 20<sup>th</sup> September 2022 is hereby struck out.
  - c. The Bill of Costs is ordered remitted for determination and/or re-taxation before another Deputy Registrar/Taxing Officer other than Hon. Claire Wanyama with the issue of whether there existed an advocate-client relationship being determined first.
  - d. The Client will have costs of both applications assessed at Kshs. 30,000.00.

Orders accordingly.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST 2024.**



**P. MULWA**

**JUDGE**

In the presence of:-

Ms. Mbugua for Advocate/applicant

N/A for Client/respondent

Court Assistant: Lilian

