



**Ngaywa Ngigi & Kibet Advocates v Invesco Assurance Company Limited (Miscellaneous Civil Case 155 of 2019) [2022] KEHC 3061 (KLR) (21 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 3061 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CIVIL CASE 155 OF 2019  
GWN MACHARIA, J  
APRIL 21, 2022**

**BETWEEN**

**NGAYWA NGIGI & KIBET ADVOCATES ..... APPLICANT**

**AND**

**INVESCO ASSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The application for determination is the Applicant/Advocate Notice of Motion dated the 19<sup>th</sup> day of March, 2019. It is brought under Section 51 (2) of the *Advocates Act*, Chapter 16 Laws of Kenya.
2. The main prayer is that judgment be entered in favour of the Applicant against the Respondent for the sums of Kshs. 128,191.00 being the certified costs due to the Applicant as against the Respondent. It is also prayed that the Respondent do pay to the Applicant the costs of application.
3. The application is premised on the Grounds that an Advocate/Client Bill of Cost was taxed at the aforesaid sum of Kshs. 128,191.00 but the Respondent has neglected, refused and/or failed to settle the costs. Further that there is no dispute that the Respondent retained the Applicant as their advocate during which the Advocate/Client's cost were incurred and subsequently taxed.
4. This application is similar to Miscellaneous Civil Application No. 160 of 2019.
5. It suffices to state that by consent of both counsel on record, the ruling herein would apply to all the other applications. The Responses filed in both matters are sworn by the same deponent and raise similar reactions to the instant application.
6. Learned counsel, Mr. Kering appeared for the Applicant and basically reiterated the averments of both the application and Supporting Affidavit sworn by Joe N. Ngigi, counsel for the Applicant on record. He further added that during the taxation of the Advocate/Client Bill of Costs, the Respondent was supplied with all the necessary documents in support of the legal fees claimed.



7. In response to the Replying Affidavit filed by Respondent Mr. Kering submitted that the same was an affront to the issues at hand for determination. It was his view that if the Respondent required any document to either counter the bill or support the assertion that the Respondent paid the fees, the documents ought to have been furnished at the taxation stage. That therefore, the request for time to supply either of the documentation was not only prejudicial to the Applicant but an abuse of the court process.
8. Counsel also denied the Respondent's assertion that the Applicant ought to prove that the Bill of Costs was drawn in conformity with the service level agreement subsisting between themselves and the Respondent. Instead, he submitted that it was well known to the Respondent that the bill was in regard to deposits which in any event was never paid.
9. In conclusion, Mr. Kering urged the court not to be persuaded to re-tax the bill even as he emphasized that this court has no jurisdiction to do so. He prayed that the application be allowed.
10. The Respondent purely relied on the Replying Affidavit of Paul Gichuhi, the Legal Manager with the Respondent Company sworn on 11<sup>th</sup> November, 2021.
11. The said affidavit avers that the Respondent was willing to settle all costs and fees it may incur in the cause of its business. That consequently, the Applicant should produce the original letter of instructions authorising them to act on behalf of the Respondent in the various cases. Further, that the Applicant should equally adduce evidence demonstrating that if they were given instructions they rendered services to the conclusion of the suit(s).
12. It is also the assertion of the Respondent that the Applicant had written to the Respondent indicating that they had seized acting on their behalf which prove they have failed to adduce in this application.
13. Finally, that the Applicant should satisfy the respective court that the Bills of Costs drawn are in conformity with the service level agreement subsisting between themselves and the Respondent. In furtherance to this was that the Applicant should make material disclosure of all deposits paid to them as legal fees.

#### Determination

14. I have accordingly considered the application, the Replying Affidavit, the oral submission for counsel for the Applicant and the Replying Affidavit. It is undisputed that the Applicant was retained by the Respondent to act for it in various suits in respect of the subject miscellaneous applications. In respect to the instant application, the suit was Naivasha CMCC No. 31 of 2015 Francis Njoroge Kuria (Suing as the administrator of the estate of Margaret Wairimu Njoroge and next of friend of FNK (Minor) and Beth Wairimu Mungai suing as next of friend of PNM (Minor) vs Mwangi Benjamin and Another and in respect Miscellaneous Civil Application No. 160 of 2019 the suit was Naivasha CMCC No. 546 of 2015 MT (minor suing through the mother and next friend Lilian Wanjiku Kibuku) Vs Mololine Service Co. Limited.
15. The taxed costs were Kshs. 128,191.00 and Kshs.71, 576.00 respectively.
16. It is trite that at the point of taxation of bill, any party objecting to an item as drawn in the bill objects to the taxing master. The taxing master makes a decision on what cost to award for the item. The taxing master can also altogether dismiss the cost claimed. What this implies is that a party who objects to an award of cost on a particular item cannot raise it at a point of entry of the judgment as per the taxed costs. Instead, such objection should be raised in a reference to this court.



17. The Respondent herein is inviting the court to find that the Applicant did not provide evidence to support taxation to the Bill of Costs. That submission cannot be made at this point. It ought to have been raised before the taxing master.
18. I would therefore agree with counsel for the Applicant that if the court were to entertain the Respondent's submission that the Applicant has not provided sufficient evidence in support of the Bill of Costs would be tantamount to inviting the court to re-tax the bill. That is untenable in the circumstances of this case.
19. Certificates of Costs were issued in respect of all the matters and the Respondent still did nothing to move the court to challenge the bills. The opposition to the respective applications is unmerited. Consequently, the application before the court is meritorious and the same is allowed. I order that judgment be and is hereby entered in favour of the Applicant against the Respondent for the sum of Kshs. 128,191.00 and Kshs.71, 576.00 in Miscellaneous Civil Application No. 160 of 2019 being certified costs.
20. On costs of these applications, I order that each party shall bear their own costs in order to avoid escalation of costs after costs and to bring the matter to closure.

Orders accordingly.

**DATED AND DELIVERED AT NAIVASHA THIS 21<sup>ST</sup> DAY OF APRIL, 2022.**

**G. W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

**Mr. Kering h/b Mr. Ngigi for the Advocate/Applicant.**

**Mr Mwangi for the Respondent/Client**

