



John Muthomi & Co Advocates v Customer Self Service & General Contractor Company Limited (Environment and Land Miscellaneous Application E014 of 2024) [2025] KEELC 1377 (KLR) (19 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1377 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2024
BM EBOSO, J
MARCH 19, 2025

BETWEEN

JOHN MUTHOMI & CO ADVOCATES APPLICANT

AND

CUSTOMER SELF SERVICE & GENERAL CONTRACTOR COMPANY LIMITED RESPONDENT

RULING

1. Falling for determination in this ruling is the reference dated 13/11/2024. It was brought as a chamber summons by M/s Customer Self Service & General Contractors Company Limited (hereinafter referred to as “the client”). Through it, the client seeks the following orders:
 - (i) an order setting aside the decision of the taxing officer dated 9/10/2024; and
 - (ii) an order directing the re-taxation of the advocate’s bill of costs.
2. The reference was initiated as a fresh stand-alone cause registered as Meru ELC Land Miscellaneous Application Number E043 of 2024. It sought the Judge’s review of the decision of the taxing officer under rule 11 of the *Advocates (Remuneration) Order*. The impugned decision was made in Meru ELC Land Miscellaneous Application Number E014 of 2024 which was initiated as an advocate/client bill of costs. With the concurrence of the parties, the two files were, on 21/1/2025, consolidated and the reference was deemed to have been filed in Meru ELC Land Miscellaneous Application Number E014 of 2024.
3. The subject of the reference is the taxing officer’s [Hon E.W Ndegwa] ruling dated 9/10/2024 in which the taxing officer taxed the advocate’s bill against the client at Kshs 468,120. Through the preceding notice of objection dated 20/10/2024, the client objected to the taxing officer’s decision on Item 1 of the bill of costs. The item relates to instructions fees



4. The reference was premised on the grounds outlined in the chamber summons dated 13/11/2024; in the supporting affidavit sworn on 13/11/2024 by Festus Muriungi Kinoti; and in the further affidavit of Festus Muriungi Kinoti sworn on 27/1/2025. It was canvassed through written submissions dated 27/1/2025, filed by M/s Choka, Chelule & Co Advocates.
5. The key ground of objection to the decision of the taxing officer is that she failed to take into account moneys already paid to the advocate. The client contends that the taxing officer refused to take his evidence relating to payments made to the advocate, adding that the taxing officer only relied on the evidence of the advocate. It is the case of the client that under rule 13 A of the *Advocates (Remuneration) Order*, a taxing officer has wide powers, including power to call for books of accounts to determine the dispute before her. The client contends that the taxing officer declined to admit the client's affidavit through which the client sought to place evidence before the court relating to the payments made to the client.
6. The advocate, John Muthomi t/a John Muthomi & Co Advocates, opposed the reference through an affidavit dated 29/11/2024 and written submissions dated 11/2/2025. The case of the advocate is that the client had the opportunity to respond to the bill of costs by filing a replying affidavit and exhibiting all documentary evidence relevant to his case but he elected to file grounds of opposition to ventilate factual issues. Counsel adds that he gave detailed explanation on the purpose of all the payments made to him and to his office assistant. It is the case of the advocate that the reference is devoid of merit.
7. The court has considered the reference, the response to the reference and the parties' submissions on the reference. The key question to be answered in this ruling is whether the reference meets the criteria upon which a superior court may interfere with a decision of the taxing officer.
8. The relevant criteria that guides our superior courts whenever they are invited to interfere with taxation decisions of taxation officers was summarized by Ringera J in *First American Bank of Kenya Ltd V Guilab P Shah & 2 others* (2002) eKLR as follows:

“First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle ... Ofcourse it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors”
9. The client in the present reference challenges the taxing officer's decision on Item 1 and faults her for declining to admit what it describes as “a replying affidavit”. The client contends that the taxing officer should have taken into account Kshs. 833,000 received by the advocate and his office for prosecution of the case giving rise to the bill of costs.
10. The court has considered the above ground. The client was invited to respond to the bill of costs before taxation. The client elected to respond to the bill of costs by filing grounds of opposition dated 4/7/2024. The client attached to the said grounds of opposition an Mpesa statement showing what it described as money sent to the advocate's personal number and to the number of the advocate's personal assistant, Edwin Mutembei. The client stated as follows at paragraphs 3 and 4 of the grounds of opposition dated 4/7/2024:

“3. The applicant has failed to account for Kshs. 883,000/= received by him and his office for the prosecution of the case as detailed in the attached Mpesa statement sent to his personal number and that of his personal assistant named Edwin Mutembei.



4. There should be a setoff on this costs with the amount of money already paid to the applicant and the applicant should reimburse the respondent the costs paid to him in excess and after accounting for any costs that he recovered from the defendants in ELC Case No. 17 of 2018”
11. While declining to admit the client’s subsequent affidavit dated 10/9/2024, the taxing officer noted that the client had responded to the bill of costs through grounds of opposition and the attached Mpesa statement and observed that there was need to bring the litigation to an end.
12. The advocate acknowledged payment by the client of Kshs. 80,000. In her decision, the taxing officer properly took into account the above acknowledged amount. The taxing officer rendered herself as follows on the client’s contention that it had paid Kshs. 833,000 to the advocate:
- “The respondent contends that it has paid a sum of Kshs 833,000/= paid via Mpesa. The applicant on the other hand refutes this claim stating that he is representing the respondent in other matters in Nkubu, Githongo and the Nyeri Court of Appeal. I have looked at the pleadings annexed to the affidavit and indeed note that the applicant is indicated to be on record for the respondent. I have also scrutinized the Mpesa statement and note that the applicant indeed received money from one Festus Muriungi Kinoti and Doris Mukoiti Kobia. However, there is no evidence that the monies received was solely meant for this matter as legal fees and not for any other matter. There is a probability that it could be fees for another matter. It could also be for a different transaction altogether. Having said that, I will deduct Kshs 80,000/= which the applicant admits was received. Above Item 1 is therefore taxed at Kshs 234,250/=.
13. It is clear from the above excerpt that the taxing officer took into account moneys that had been acknowledged as received by the advocate towards the advocate’s costs in ELC Case No 17 of 2018. Secondly, it is not lost to the court that if the client has proof of payment of any other money to the advocate over and above the acknowledged sum of Kshs. 80,000, he has the remedy of accounts under order 52 rule 4(1) of the *Civil Procedure Rules*. Clearly, the issue which the client is raising as a basis for setting aside the decision of the taxing officer is an issue of accounts which can be properly ventilated and addressed on the platform of an originating summons taken out under the above framework.
14. For the above reasons, I do not think the applicant has satisfied the criteria upon which this court can interfere with the decision of the taxing officer. The result is that the application/reference dated 13/11/2024 is rejected for lack of merit. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the client shall bear costs of the reference.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF MARCH 2025

B M EBOSO [MR]

JUDGE

In the presence of:-

Mr Chelule for the Client

Mr Tupet - Court Assistant

