



REPUBLIC OF KENYA



**Mbugua Atudo & Macharia Advocates v Nairobi City Water &
Sewerage Company Limited (Miscellaneous Civil Case E258 of 2022)
[2023] KEELC 22228 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22228 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CIVIL CASE E258 OF 2022
JO MBOYA, J
DECEMBER 14, 2023**

BETWEEN

MBUGUA ATUDO & MACHARIA ADVOCATES APPLICANT

AND

NAIROBI CITY WATER & SEWERAGE COMPANY LIMITED .. RESPONDENT

RULING

Introduction and Background

1. Vide Notice of Motion Application dated the 12th May 2023; the Applicant/Advocate herein has approached the Honorable court seeking for the following reliefs; [verbatim]:
 - i. The Client’s Chamber Summons dated the 2nd May 2023 and this Application be heard together.
 - ii. Judgment be entered in favor of the Advocate, M/s Mbugua Atudo & Macharia Advocates, against the Client Nairobi City Water & Sewerage Company Ltd for the sum of Kes.4, 391, 170.40/= only together with Interests at court rates from 19th April 2023; until payment in full.
 - iii. Costs of this Application be borne by the Client.
2. The instant Application is premised and anchored on the grounds which have been alluded to at the foot of the Application. Furthermore, the Application under reference is supported by the affidavit of Kamau Mbugua, Advocate, sworn on even date.



3. Suffice it to point out that upon being served with the instant Application, the Respondent/Client was at liberty to file her response. However, the Respondent herein neither filed any Grounds of opposition nor Replying affidavit.
4. Be that as it may, the subject Application came up for hearing on the 23rd November 2023; whereupon the advocates for the respective Parties covenanted to canvass and dispose of the Application by way of written submissions.
5. Consequently and in the premises, the Honourable court proceeded to and issued directions pertaining to and concerning the filing and exchange of the written submissions by the Advocates for the Parties.
6. First forward, the matter herein was thereafter fixed and/or listed for mention on the 14th December 2023, with a view to confirming whether the Parties had filed and exchanged their respective written submissions.
7. Nevertheless, when the matter was called out, the respective advocates pointed out that same were not keen on filing written submissions and in any event, the advocates for the respective Parties intimated to the court that same [Court], should proceed and render a ruling as pertains to the subject Application, based on the material on record.

Depositions by the Parties:

a. Applicant's Case:

8. The Applicant's case is premised on the contents of the Supporting affidavit sworn by Kamau Mbugua, advocate; and in respect of which same has pointed out that the Respondent herein duly instructed and engaged the Applicant/Advocate to take up the conduct of Nairobi ELC No. 930 of 2012, for and on behalf of the Respondent herein.
9. Furthermore, the Applicant herein has averred that pursuant to the instructions received from the Respondent, the Applicant herein duly entered appearance and thereafter filed the requisite pleadings for and on behalf of the Respondent.
10. Besides, the Applicant herein has averred that subsequently same (Applicant) proceeded to and defended ELC No. 930 of 2012 up to and including the closure thereof.
11. Nevertheless, it has been averred that upon the issuance of and service of the Fee note by and on behalf of the Applicant, the Respondent herein failed, neglected and/or otherwise refused to settle the profession fee note or at all.
12. Other than the foregoing, it has been averred that arising from the failure and/or neglect by the Respondent to pay/settle the professional fee note, the Applicant/ Advocate herein was constrained to and indeed filed Advocate- client bill of costs dated the 7th November 2022, which was ultimately taxed vide Ruling delivered on the 19th April 2023.
13. Further and in addition, the Applicant has averred that upon the taxation of the advocate client bill [details in terms of the preceding paragraph], the Respondent herein (sic) felt aggrieved and dissatisfied and thereafter filed a reference vide Chamber Summons dated the 2nd May 2023; and wherein same sought to challenge and/or impugn the ruling on taxation and the consequential certificate of taxation.



14. Be that as it may, the Applicant has further averred that the reference dated the 2nd May 2023; was thereafter heard and disposed of vide Ruling of the court rendered on the 23rd November 2023, whereupon the reference was found to be devoid of merits and was thereafter dismissed.
15. Arising from the foregoing, the Applicant has thus contended that there is no pending appeal against the Certificate of taxation. Further and in any event, the Applicant has also averred that the certificate of taxation, has neither been reviewed, set aside and/or quashed.
16. On the other hand, the Applicant has similarly averred that the Respondent herein has not disputed the existence of a retainer between the Applicant and the Respondent; and hence there is no dispute at all on the question of retainership.
17. Based on the foregoing averments, the Applicant herein has therefore invited the Honourable court to find and hold that the Application under reference satisfies the requisite conditions alluded to vide the provisions of Section 51(2) of the *Advocates Act*, Chapter 16 Laws of Kenya.
18. In a nutshell, the Applicant herein has thus implored the Honourable court to find and hold that the subject Application is meritorious and thus ought to be allowed.

b. Respondent's Case:

19. Suffice it to point out that despite having been served with the Application dated the 12th May 2023, the Respondent herein neither filed any Grounds of opposition nor Replying affidavit.
20. Furthermore, when the Application came up for mention on the 14th December 2023, Learned counsel for the Respondent acknowledged and admitted that same had not responded to the subject Application.
21. Further and in addition, it is also worthy to reiterate that Learned counsel for the Respondent also intimated to the court that same would not be filing any written submissions.
22. Arising from the foregoing, it is therefore evident and apparent that the Respondent herein has neither opposed the Application nor controverted the factual deposition(s) contained at the foot of the supporting affidavit.

Issues for Determination:

23. Having reviewed the contents of the Application under reference and taking into account the fact that the Respondent has neither filed any Response thereto; the following issues do arise/ emerge and are thus germane for determination;
 - i. Whether the Certificate of taxation issued by the taxing officer on the 11th May 2023 has been reviewed, varied and/or otherwise rescinded.
 - ii. Whether there is a dispute as pertains to retainer and if not, whether the Applicant is entitled to Judgment on the basis of the Certificate of Taxation.



Analysis and Determination

Issue Number 1 Whether the Certificate of Taxation issued by the Taxing Officer on the 11th May 2023 has been reviewed, varied and/or otherwise rescinded.

24. Before venturing to address and resolve the issue hereinbefore mentioned, it is imperative to state and underscore that the Applicant herein duly filed an advocate client bill of costs dated the 7th November 2022 and which bill of costs was duly served upon the Respondent herein.
25. Furthermore, there is no gainsaying that the advocate client bill of costs, [details in terms of the preceding paragraph], was thereafter subjected to taxation before the taxing officer, culminating into the rendition of a Ruling rendered on the 19th April 2023.
26. Instructively, upon the taxation of the advocate client bill of costs, the taxing officer taxed and certified the advocate client bill of costs in the sum of Kes.4, 391, 170.40/= only. In any event, the taxing officer thereafter proceeded to and generated the requisite certificate of taxation dated the 11th May 2023.
27. Be that as it may, it is worthy to recall that upon the delivery of the Ruling on taxation, the Respondent herein (sic) felt aggrieved and/or dissatisfied and thereafter proceeded to and filed a Reference vide Chamber Summons Application dated the 2nd May 2023, wherein same sought to challenge and/or impugn the certificate of taxation.
28. Nevertheless, it suffices to point out that the reference dated the 2nd May 2023; was thereafter canvassed before the court and subsequently same was disposed of vide Ruling rendered on the 23rd November 2023. For coherence, the court found and held that the reference by and on behalf of the Respondent, was devoid of merits.
29. From the foregoing analysis, it is evident and apparent that even though the Respondent filed and/or lodged a reference [vide Chamber Summons Application], seeking to challenge the certificate of taxation, the reference was dismissed by the court.
30. Notably, the dismissal of the reference denotes that the certificate of taxation, which was the subject of challenge, remained undisturbed and thus in existence.
31. Consequently and in the premises, the certificate of taxation that was issued on the 11th May 2023, has therefore neither been reviewed, varied and/or set aside, or at all.
32. Additionally, it is important to recall that when the matter came up for mention on the 14th December 2023, Learned counsel for the Respondent, conceded that same would neither file any Grounds of opposition or Replying affidavit.
33. Consequently and in this regard, there is therefore no gainsaying that the factual depositions by and on behalf of the Applicant herein,[in terms of the Supporting Affidavit], have therefore not been controverted.
34. To surmise, I find and hold that the certificate of taxation which was generated and sealed on the 11th May 2023; has therefore neither been rescinded nor set aside, whatsoever.



Issue Number 2; Whether there is a dispute as pertains to retainer and if not, whether the Applicant is entitled to judgment on the basis of the certificate of taxation.

35. Other than the requirement that the Applicant must show that the certificate of taxation has neither been challenged nor set aside, there is a second requirement which must also be satisfied and complied with.
36. Notably, the provisions of Section 51(2) of the *Advocates Act*, Chapter 16 Laws of Kenya, also underscores that such an Applicant [seeking Judgment on the basis of Certificate of Taxation], must also demonstrate that there is no dispute as pertains to the question of retainer.
37. For brevity, it is imperative to take cognizance of the Section 51(2) of the *Advocates Act*, Chapter 16 Laws of Kenya. In this respect, it suffices to reproduce the said provisions.
38. Same as hereunder;
51. General provisions as to taxation
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.
39. Having reproduced the provisions of Section 51(2) of the *Advocates Act* [supra], it is worthy to recall and reiterate that the question of retainer, is paramount to the entry of Judgment in favor of an Applicant, like the one before the court.
40. Furthermore, as pertains to the instant matter, there is no suggestion nor contest concerning the issuance of instructions to and in favor of the Applicant herein.
41. For the avoidance of doubt, even when the Respondent filed the reference dated the 2nd May 2023, [which has since been disposed of], the Respondent herein did not challenge and/or impugn the fact that the Applicant was duly engaged and retained by herself (Respondent).
42. Other than the foregoing, there is also no gainsaying that the averments by and on behalf of the Applicant herein, which are contained in the body of the Supporting affidavit, have neither been controverted nor responded to by the Respondent.
43. Consequently and in view of the foregoing, it is the finding and holding of this court that the Applicant has duly established and demonstrated that same was lawfully instructed and retained by the Respondent, to act for and on her behalf touching and concerning Nairobi ELC No. 930 of 2012.
44. In a nutshell, the court comes to the conclusion that the Applicant herein has duly shown and established that there exists a certificate of taxation, which has not been rescinded; and furthermore, that the question of retainer is not in dispute.



45. Based on the foregoing, the court thus finds that the Applicant herein has satisfied the twin ingredients underpinned by the provisions of Section 51(2) of the *Advocates Act*, Chapter 16 Laws of Kenya and thus same is entitled to entry of Judgment on the basis of the certificate of taxation issued on the 11th May 2023.
46. Before departing the issue under reference, it suffices to cite and highlight the holding in the case of *Lubulellah & Associates Advocates vs N. K. Brothers Limited* [2014] eKLR, where the court observed as hereunder;
- “The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs.
47. Simply put, the moment the taxing officer issues a certificate of taxation and same is neither challenged vide a reference; or if challenged, the reference has been determined and similarly, in the absence of a dispute as to retainer, the Applicant will no doubt be entitled to Judgment on the basis of the certificate of taxation.
48. Consequently, my answer to issue number two [2] is twofold. Firstly, there is no dispute on retainer. Secondly, the Applicant is entitled to Judgment on the basis of the certificate of taxation dated the 11th May 2023.

Final Disposition

49. Having analyzed the two issues that were highlighted and enumerated in the body of the Ruling, the court has found and held that the Applicant herein has duly established and demonstrated that same is truly entitled to Judgment on the basis of the Certificate of Taxation.
50. Arising from the foregoing, the Honourable court does find merit in the Application dated the 12th May 2023; and thus proceeds to make the following orders;
- i. The Application dated 12th May 2023 be and is hereby allowed.
 - ii. Judgment be and is hereby entered in favor of the Applicant as against the Respondent in the sum of Kes.4, 391, 170.40/= only, in accordance with the certificate of taxation issued on the 11th May 2023.
 - iii. The Applicant herein shall also be entitled to Interests at 14% per annum, w.e.f 19TH day of April 2023; being the date of the taxation of the Bill of Costs giving rise to the Certificate of Taxation.
[See Rule 7 of the Advocate Remuneration Order].
 - iv. The Applicant be and are hereby awarded costs of the Application.
 - v. Further and to avert the filing of supplementary bill of costs, the Costs decreed in favor of the Applicant in terms of clause (iv) are hereby assessed and certified in the sum of Kes.50, 000/= only.
51. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023.



OGUTTU MBOYA,

JUDGE.

In the Presence of:

Benson - Court Assistant.

Mr. Muriuki h/b for Mr. Dickson Khisa for the Client/Respondent.

Mr. E. Owiti for the Advocate/Applicant.

