



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISCELLANEOUS APPLICATION NO. 640 OF 2012**

**LUBULLELLAH & ASSOCIATES, ADVOCAT.....ADVOCATE**

**VERSUS**

**ELYSIUM LIMIATED.....1<sup>ST</sup> CLIENT**

**NITIN DAWDA.....2<sup>ND</sup> CLIENT**

**HASMUKH DAWDA.....3<sup>RD</sup> CLIENT**

**RULING NO. 3**

1. The application before me has been brought by 3 applicants, namely;
  - a. **ELYSIUM LIMITED;**
  - b. **NITIN P. DAWDA; and**
  - c. **HASMUKH P. DAWDA.**
2. All the 3 applicants used to the clients of the Respondent, **LUBULELLAH & ASSOCIATES ADVOCATES.**
3. Following the break-up of their respective relationships, the Law Firm charged fees for the services they had rendered.
4. The clients did not agree to pay the fee notes as they contended that the fees were too inflated.
5. The Law Firm was thus compelled to file a Advocate/Client Bill of costs, for taxation.
6. The Bill of Costs was taxed by Mr. Reuben Nyakundi, who was then a Taxing Master. Mr. Nyakundi is currently a Judge of the High Court.
7. On 27<sup>th</sup> June 2013, the Taxing Master awarded to the Advocates the sum of Kshs. 1,066,900/-.
8. **HASMUKH DAWDA** filed a Reference, seeking to set aside the decision of the Taxing Master.
9. **ELYSIUM LIMITED and NITIN DAWDA** also joined the fray by seeking the setting aside of the Taxing Master's decision.
10. After giving due consideration to the Application, Kimondo J. delivered his verdict on 6<sup>th</sup> May 2014, dismissing the said Application.
11. The Law Firm thereafter moved the court pursuant to Section 51 (2) of the Advocates Act.
12. In answer to the Advocates application, the clients submitted, inter alia, that when Kimondo J. dismissed their application, the learned Judge had not been called upon to determine whether or not the Advocates had failed to give credit to the clients for some payments which the clients had paid towards the fees charged.
13. On 13<sup>th</sup> March 2015, this Court entered judgement in favour of the Law Firm for Kshs.

- 1,066,900/-, which the taxed costs.
14. Nonetheless, the clients have once again come back to court. They have asked the Court to determine whether or not the Law Firm had already been paid Kshs. 300,000/- in respect to its fees.
  15. The clients insisted that that sum of money was paid by them to the Law Firm, and that unless the Law Firm was compelled to give due credit for it, the Law Firm would be unjustly enriched.
  16. As far as the clients were concerned, this Court had not taken into account the payment of the sum of Kshs. 300,000/- when the court was entering judgement.
  17. A look at the Ruling dated 13<sup>th</sup> March 2015 reveals that the issue regarding the alleged payment of Kshs. 300,000/- was very much alive when the Law Firm had applied for judgement.
  18. At paragraph 17 of my Ruling, I expressed myself thus;

**“In comparison to that case, the clients in this case did file a reference. They therefore had a perfect opportunity to raise the issue regarding the payment which the advocate has not given them credit for. But they did not raise the said issue”.**

19. The sum which they were complaining about at that time was the same Kshs. 300,000/- which is the subject matter of the present application.
20. Addressing that issue, in the Ruling dated 13<sup>th</sup> March 2015, the Court said;

**“The clients cannot be accorded yet another opportunity at this stage, to do something which they could have done earlier, but which they failed to do. I so hold because if the clients’ complaint were to be entertained after the issuance of the certificate of taxation and also after the determination of the reference (which was dismissed), that would be tantamount to negating the very essence of finality, as envisaged by Section 51 (2) of the Advocates Act”.**

21. In the light of the foregoing, the court proceeded to enter judgement in favour of the Law Firm.
22. By raising the same issue concerning some Kshs. 300,000/- which had been allegedly paid to the Law Firm, the clients believe that Section 34 (1) of the Civil Procedure Act would enable them to re-open a matter which the court had already held to be final.
23. In **JOSEPH KOTONYA AKETCH Vs. NSSF BOARD of TRUSTEES & ANOTHER, ELC No. 1136 of 2004** Lady Justice Gacheru expressed the following view;

**“... Section 34, in my view, does not seek to re-open litigation. The questions envisaged therein are in relation to the execution, discharge or satisfaction of a decree and not questions that will interfere with the findings of the court”.**

24. That view is in perfect conformity with the express wording of that statutory provision. I say so because that which could interfere with the Decree, by altering it in any form, would not be a process of executing the said Decree. Such a process could be deemed to be an effort to vary the Decree.
25. In **LUBULELLAH & ASSOCIATES ADVOCATES Vs. N.K. BROTHERS LTD Misc. Appl. No. 52 of 2012**, Lady Justice Kamau had the following to say about the finality of certificates of costs;

**“The law is very clear, that once a taxing master has taxed the costs, issues a Certificate of costs and there is no reference against the 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 judgement...”**

**The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgement in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation...”**

- 26.If the court is right to grant judgement for the sum indicated in the Certificate of Taxation, as already happened in this case, it would be wrong to later re-visit the judgement, by altering the sums awarded.
- 27.There must be an end to litigation. In this case, the clients had their opportunity to advance their case concerning the alleged payment of Kshs. 300,000/- to the Law Firm. They did not succeed when the matter was before the Taxing Master.
- 28.They also did not succeed when the Law Firm had applied for judgement.
- 29.Therefore, the clients can only be told that it is not permissible for them to re-open the issue again.
- 30.In the circumstances, the Notice of Motion dated 16<sup>th</sup> June 2015

is dismissed. Costs are awarded to the Respondent.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>th</sup> day of November 2015.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

Lubullelah for the Advocate

Kibanya for the 1<sup>st</sup> Clients.

Kibanya for 2<sup>nd</sup> Client.

Miss Marieng'a for 3<sup>rd</sup> Client.

Collins Odhiambo – Court clerk.