



P I Samba & Company Advocates v Linear Credit Limited & another (Miscellaneous Application E170 of 2022) [2025] KEELC 1223 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E170 OF 2022**

**MD MWANGI, J
MARCH 7, 2025**

BETWEEN

P I SAMBA & COMPANY ADVOCATES ADVOCATE

AND

LINEAR CREDIT LIMITED 1ST RESPONDENT

TARU RANCHERS LIMITED 2ND RESPONDENT

RULING

(In respect to the chamber summons dated 4th December 2023 brought under the provisions of rule 11 of the Advocate Remuneration Order seeking to set aside the ruling of the Taxing Master delivered on the 20th November 2023)

Background

1. The chamber summons dated 4th December 2023, is a reference challenging the ruling of the Taxing Master, Hon. I.N. Barasa delivered on 20th November 2023.
2. A reference to this court is in the nature of an appeal from the decision of a taxing master filed in the form of a chambers summons under rule 11 of Advocates Remuneration Order. In this case, Advocate/Applicant's chamber summons challenges the decision of the taxing master on the basis that;
 - a. The taxing master failed to appreciate the list and bundle of documents dated 8th August 2021 as well as the submissions of 2nd November 2023 all evincing that the Advocate received and acted on instructions from the Respondents to negotiate the sale of the suit property.
 - b. The learned taxing officer failed to appreciate the List and Bundle of Documents dated 8th August, 2021 as well as the submissions dated 2nd November, 2023 all evincing that the advocate



received and acted on instructions from the respondent to negotiate for the sale of the suit property.

- c. The taxing master in arriving at her decision to strike out the bill of costs herein committed a grave error of principle by ignoring blatant facts as pleaded and supported by evidence, failing to consider all the relevant documentation and misrepresenting herself on the fact in issue that there existed an advocate client relationship.
- d. The taxing officer on the basis of the aforementioned misapprehension of facts as pleaded dismissed the applicant's subject Bill of Costs for want of instructions and thereby rendered her decision manifestly unjust for being insupportable by the facts and the law.

Directions by the Court

3. On 29th October 2024, this court delivered a preliminary ruling, inviting the parties to submit on a critical issue that all had omitted in their submissions; the issue whether the taxing master acted within her jurisdiction in determining on the existence or otherwise of an Advocate –Client relationship in the course of taxing an Advocate –Client bill of costs. It was indeed the issue upon which she dismissed the Advocate's bill of costs dated 11th August 2021.
4. Parties duly submitted on the issue. I have therefore considered their earlier submissions and the subsequent submissions in writing this ruling.

Issues for Determination

5. The issues for determination in this court's considered opinion are;
 - a. Whether a taxing master has jurisdiction to determine the existence or otherwise of an Advocate-Client relationship in the course of taxing an Advocate - Client Bill of Costs.
 - b. Whether there was an Advocate-Client relationship between the Advocate/Applicant herein and the Respondents.
 - c. Dependent on the out-come of (b) above, what order should the court issue in respect to the Advocate-Client bill of costs the subject matter of these proceedings and the impugned ruling of the taxing master.

Determination

A. Whether a taxing master has jurisdiction to determine the existence or otherwise of an Advocate-Client relationship in the course of taxing an Advocate-Client Bill of Costs.

6. There have been two schools of thought on the issue as apparent even from the submissions by the parties.
7. The Advocate/Applicant has cited the decision in V. Chokaa and Company Advocates –vs- The County Government of Mombasa and the decision by Retired Justice Waweru in Mugambi & Company Advocates –vs- John Okal Ogwayo (2013) eKLR to the effect that the taxing master has no jurisdiction to determine on the existence of a retainer; that his/her jurisdiction is limited to taxing items on the bill of costs where there is an established Advocate/Client relationship.
8. The Respondents are of the contrary opinion.



9. This is an issue that has found its way to the Court of Appeal in the case of Wilfred N. Kunosi –vs- Flamco Limited (2017) KECA 431 (KLR), where the court pronounced itself as follows:-

“The taxing officer sits in taxation as a judicial officer. His or her task is to determine legal fees for legal services rendered. A taxing officer must determine the question whether he/she has jurisdiction to tax a bill if the issue of want of Advocate/Client relationship is raised. An allegation that the Advocate/Client relationship does not obtain in taxation of an Advocate-Client bill of costs must be determined at once. The taxing officer has jurisdiction to determine that question.”

10. The decision by the Court of Appeal settles the issue. It is binding on this court. I have not come across any other decision of the Court of Appeal, or the Supreme Court contradicting the above position. The Advocate - Applicant has not distinguished it either.

11. On deep reflection, though I was of the first school of thought, I am persuaded that it is the proper interpretation of the law.

B. Whether there was an Advocate-Client relationship between the Advocate/Applicant herein and the Respondents.

12. With the first issue settled, the next one is whether an Advocate - Client relationship existed between the Advocate/Applicant and the Respondents.

13. I have taken time to go through the bundle of documents filed by the Advocate in this reference which was the same bundle filed before the taxing officer.

14. It is well settled that an Advocate needs not obtain written authority from his/her Client. Instructions can be implied or discerned from the conduct of the Client.

15. The Advocate in this matter insists that her instructions were carried out running from sometimes in 2015 to 2017 constituting negotiations for the sale of the suit parcel of land known as L.R. No. 12860 registered in the name of Taru Ranchers Limited, the 2nd Respondent herein. She further alleges that the 1st Respondent is a director and shareholder of the 2nd Respondent, in addition to other persons including Ayub Musa, with whom she was in correspondence with at all material times.

16. From my careful perusal of the bundle, there is nothing to show that the Advocate was dealing with the alleged individuals known as Ayub Musa, Kipro Bundotich and Diana Bundotich in their capacities as directors or shareholders of the 1st and 2nd Respondent companies. The burden of proof was upon the Advocate. Additionally, besides alleging that she was instructed, the Advocate has not established the nature and scope of the alleged instructions, if at all.

17. There is one well established fundamental principle in our law; that a company is a distinct legal personality independent of its directors and shareholders.

18. I agree with the findings of the taxing master, in her impugned ruling delivered on 20th November 2023 that the instructing Clients, if at all there were any such instructions were not the entities sued as the 1st and 2nd Respondents. The Advocate/Client has not proved that the Respondents instructed her to act as their Advocate as alleged. I find no reason whatsoever to interfere with the ruling of the taxing master delivered on 20th November 2023.

19. Consequently, I dismiss the chambers summons dated 4th December 2023 with costs to the Respondents.



It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 7TH DAY OF MARCH 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mutegi for the 2nd Respondent

N/A for the Advocate/Applicant & the 1st Respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

