



**Oyomba Mosota & Wamwea Advocates v Michelle S Nirenstein & Mara  
Napa Camps & Conservation Center Trust (Miscellaneous Civil Application  
E007 of 2024) [2025] KEELC 4983 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4983 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
MISCELLANEOUS CIVIL APPLICATION E007 OF 2024  
LN GACHERU, J  
JULY 3, 2025  
(EMANATING FROM NAROK ELC NO. E003 OF 2024)  
IN THE MATTER OF TAXATION OF THE BILL  
OF COSTS BETWEEN ADVOCATE AND CLIENT**

**BETWEEN**

**OYOMBA MOSOTA & WAMWEA ADVOCATES ..... ADVOCATE**

**AND**

**MICHELLE S NIRENSTEIN & MARA NAPA CAMPS & CONSERVATION  
CENTER TRUST ..... CLIENT**

**RULING**

1. The Advocates herein Oyomba Mosota & Wamwea Advocates, were instructed by the Clients on or about January 2024 to institute NAROK ELC CASE NO. E003 OF 2024.
2. The Advocate and Clients first engaged in an in-depth formal discussion relating to the dispute regarding the ownership, management and control of the Mara Napa Camps & Conservation Centre Trust, together with all the assets relating thereto on 5th January 2024, wherein the Advocate was thoroughly briefed on the civil and criminal aspects of the dispute, including the value of the said assets, as well as the need to establish a trust/foundation and in respect of which the Advocate quoted the fees to be charged, and which fees would later be reduced into writing if the same was agreeable to the clients.
3. The client wrote to the Advocate later that evening, confirming her desire to take up his services, premised on their earlier discussions on that same day, and further informing him that she had already initiated a wire transfer for his retainer. Meanwhile, at this point, fees had already been elaborately discussed pertaining to the dispute over the ownership, management, and control of the camp,



together with the assets attributable to the camp. The aforesaid wire transfer for the Advocate's retainer was initiated pursuant to the discussions held between the Advocate and the client on legal fees.

4. It is on the aforesaid premise that the Advocate reduced the terms as discussed by the parties on 5th January 2024, into a retainer agreement shared with the Client on 8th January 2024, with the understanding that she could make additional comments on the said agreement.
5. Upon reviewing the Agreement, the client realized that the Advocate had left out some fundamental details from the Agreement despite their elaborate discussions on the scope of work, which led her to beef up the scope of work by inserting the details of all properties that she needed the said Advocate to conduct background checks on, as well as to give clear details of all properties that were to form subject of both the civil and criminal proceedings discussed previously with the Advocate, with the goal being to recover the properties in entirety.
6. The changes made to the scope of work did not vary or affect the value of the properties to form part of the civil proceedings as had been discussed at the initial meeting, hence why the legal fees on both criminal and civil aspects did not change. Further, the extent of the value of the subject matter was by this time fully within the knowledge of the Advocates. However, the legal fees as agreed by the parties were never meant to be based on the value of the properties, as it is evident that the value of the properties was never a consideration.
7. Upon forwarding the said changes as evinced in the Client's email on 13 January 2024, the said Advocate did not reject or express dissatisfaction or reservation with the Agreement as amended. Instead the Advocate proceeded to execute the client's instructions first by writing the Demand letter, and second by instituting legal proceedings in the manner indicated in the second agreement. Indeed, there is no evidence of the Advocates' response to the said email or any evidence that the Advocates did not agree to the terms as amended. Further, Clause 3 to the Retainer Agreement remained un-amended.
8. Furthermore, clause 5 of the said Agreement, which the Advocate signed, provided that:

'Although your continued instructions shall constitute acceptance of our terms, I would be grateful if you could sign and date the enclosed copy of this letter and return it to us as to confirm your acceptance of the terms set out above'
9. Despite the client not appending her signature on the Retainer Agreement, she continued to instruct the Advocate, which signified acceptance of the terms of the retainer agreement.
10. During this entire time, the Advocate was fully aware of the value of the subject matter as evinced by paragraph 28(x) of the Demand letter authored by the advocate on 17th January 2024, which sought the same value sought in the Complaint at prayer no. XIV. The client contends that the billing model, as agreed upon by the parties, was not to be based on the subject value of the properties comprising the dispute, namely, the management, control, and ownership of Mara Napa Camps.
11. It was not until 24th May 2024, three months after filing of the suit subject of the bill of costs, that the Advocate purported to, through an email, unilaterally alter the terms of the "retainer agreement" to change the billing model by shifting the same to the provisions of the Advocates Remuneration Order.
12. Considering the above background, does the client owe the Advocate any further legal amounts in legal fees and disbursements? The court will consider the following; -
  - i. Clause 4 of the Agreement clearly provided that the balance of the legal fees and disbursements of 50% was to be paid upon completion of each of the assignments; (however, it is clear



that Legal fees earlier discussed on 5<sup>th</sup> January 2024, and quoted in the retainer agreement dated 8th January 2024, was not based on the value of the properties subject of the dispute-ownership, control and management of Mara Napa Camps including all its assets and cannot be attributable to any value).

- ii. The client has already paid the full amount for item 3 (c) of the retainer agreement; as for item 3 (b), despite payment, the same was actually never undertaken; and lastly, as for item 3 (a) of the retainer agreement, being the subject suit before the ELC, the hearing of the same is yet to even take off. It is noteworthy that the Deposit Request Note did not change even after the amendment of the retainer agreement, but before the filing of the suit, after issuance of the demand letter.
  - iii. All tasks that were performed by the Advocate have been fully paid up, if not overpaid. The Deposit Request Note was 50% of the legal fees as required under clause 4 of the retainer agreement. This deposit was paid as admitted by the Advocate in the Bill of Costs dated 12th June 2024.
13. The Law Firm of Oyomba Mosota & Wamwea Advocates filed the Advocate- Client Bill of Costs dated 12<sup>th</sup> June 2024 and the taxing master, Hon D. Ngayo( RM), taxed the said bill of costs to the tune of Kshs. 5,760,270.80/= . However, the said Law Firm of Oyomba Mosota & Wamwea Advocates was aggrieved by the said Ruling on the basis that the taxing master exercised his discretion on the grounds that are unclear and unreasonable and awarded ksh 3000,000/= as instruction fees, whereas the value of the subject property was ascertainable from the pleadings.
  14. For the above reasons, the said Law Firm filed a Reference, and sought for re-assessment of the amount to be awarded on the instruction fees. The Reference herein is premised on the dissatisfaction on the amount assessed as instruction fees, and the said Law Firm instituted this Appeal/ Reference against the Advocate-Client Bill of Costs that was taxed by the taxing master.
  15. From the court record, it is evident that on the 22nd January 2025, the taxing master, Hon. Daniel Ngayo, delivered a Ruling on the Advocate- Client Bill of costs, wherein he found and held that there was no valid Retainer Agreement between the Advocate & Client; thus, he proceeded to tax the Advocate-Client Bill of Costs at Kshs. 5,760,270.80/=.
  16. The Client herein was also aggrieved by the Ruling of the taxing master and filed the Chamber Summons Application dated 5<sup>th</sup> February 2025, which is premised on Sections 1A, 3A, 3B of the Civil Procedure Act, Rule 11 of the Advocates' (Remuneration)(amendment)Order 2014 and Article 159 of the Constitution, where the Client sought for orders:
    1. That the Honourable Court be pleased to set aside the Ruling of Hon. Daniel Ngayo of ELCMISC/EOO7/2024 in its entirety.
    2. That the Honourable Court sets aside the instruction fees taxed at Kshs. 3,000,000/= and the same be taxed as per the retainer agreement dated 8th January 2024.
    3. That the Honourable Court sets aside the Advocate-Client fees taxed at Kshs. 5,760,270.80/= and the same to be taxed as per the retainer agreement dated 8th January 2024.
    4. That the court upholds the retainer agreement dated 8th January 2024.
    5. That the costs of this Application be provided for.
  17. This Chamber Summons by the Client is supported by the grounds set out on its face and on the Supporting Affidavit of Michelle S Nirenstein, sworn on 5th February 2025.



18. It is the Clients' claim that the Taxing Officer erred by finding that the retainer agreement was not valid, as it failed to consider the background and situational context of the retainer agreement.
19. Similarly, the Advocates also filed a Reference Application dated 6th February 2025, and sought for these orders;
  1. Spent.
  2. Spent.
  3. Spent.
  4. That consequent to the grant of prayers 2 & 3 above, the Court be pleased to set aside the Ruling of the Taxing Master to the extent that it related to the reasoning and determination pertaining to item No. 1- instruction fees, and on calculations arriving at Ksh. 5,70,270.80/= in the Advocate/Client bill of costs dated 12th June 2024(herein after bill of costs).
  5. That this Honourable court be pleased to reassess the fees due on the aforesaid item of the advocates in respect of the bill of costs and make findings on the same.
  6. That in the alternative and without prejudice to the foregoing, this honourable court be pleased to remit the aforesaid item of the bill of costs to another taxing officer for review and reconsideration with direction on taxation.
  7. That the costs of this application be provided for.
20. It was the Advocate's case that there was no valid and binding retainer agreement between the parties. The Advocate/ Applicant also alleged that the impugned retainer agreement was never executed by the client.
21. The Client opposed the Advocates' Application and the prayers sought in the Advocates' Reference Application vide a Replying Affidavit dated 17th March 2025. The Client/ Respondent reiterated her position as canvassed in her Client/ Applicant's Reference Application.
22. Subsequently, the Advocates also filed their Response to the Client's Reference Application vide a Replying Affidavit dated 2nd April 2025, wherein they opposed the Client's Reference Application and reiterated their initial claims.
23. Thereafter, the Client responded to the Advocates' claim as raised in their Replying Affidavit vide a Further Affidavit . The Court directed that the two applications be canvassed together by way of written submissions.

### **The Advocates' submissions**

24. The Advocate/ Applicant submitted that the Ruling of the taxing master lacks legal and factual merit, having been premised on an invalid retainer agreement and misapprehension of the applicable principles in the taxation process.
25. However, the Advocate/ Applicant further submitted that this court should uphold the taxing officer's ruling, save for its determination on the instruction fees and the calculations arriving at the total advocates' costs.
26. The Advocate/ Applicant also submitted that the Clients/ Applicants Application has no merit, since for a retainer agreement to be valid, it must meet the requirements set out for a contract. The advocate further submitted that the Clients' reliance on clause 5 of the retainer agreement is misplaced. The



said clause merely provides that the client's continued instructions would indicate acceptance of the terms. However, such acceptance is insufficient to meet the statutory threshold under section 45(1). The Advocate, therefore, contends that the purported retainer agreement is invalid and the applicable framework is section 44 for the determination of costs through the Advocate's Remuneration Order.

27. The Advocate/ Applicant cited sections 44 and 45 of the Advocates Remuneration Act, and the cases of William Muthee Muthami vs Bank of Baroda [2014] eKLR, Abuodha & Omino Advocates vs Kakuta Maimai Hamisi Misc. app. 46 of [2015] eKLR, Kakuta Maimai Hamisi, Peris Pesi Tobiko v Independent Election and Boundaries Commission and Returning Officer Kajiado East constituency [2017] eKLR, Nzaku & Nzaku Advocates v Tabitha Waithera Mararo as trustee of Tracy Naserian Kaaka (minor)& Others [2020] eKLR.
28. Further, the Advocate/ Applicant submitted that the Clients have failed to demonstrate any error of fact or law in the Taxing Officer's ruling. The Advocate/ Applicant also contends that the Clients arguments are based on an invalid agreement, and a misapprehension of the applicable legal principles. The advocate urged this court to uphold the Ruling of the taxing officer, save for the reasoning and the determination pertaining item No. 1- being the instruction fees and the calculations arriving at Kshs. 5,760,270.80/= against which the Advocates have filed a Reference application dated 6<sup>th</sup> February 2025.
29. The Advocate/ Applicant further submitted that the doctrines of estoppel, acquiescence, and waiver are not applicable in the first instance where there was no valid agreement, as both the Client and Advocates declined to execute the impugned retainer agreement.

### **The Clients submissions**

30. The Clients submitted that the Taxing Officer did err in finding that there is no retainer agreement. The clients contended that even in the event the Retainer Agreement is not valid as the Advocates claim, it is true to say that the parties were bound by the terms of the agreement, and are estopped from claiming that either of them was not in agreement with the terms of the said Retainer Agreement. Further, that the conduct of both parties showed their consent and interest to be bound by the said retainer agreement.
31. The Clients further submitted that the Advocates and the 1<sup>st</sup> Client entered into a Retainer Agreement on 8<sup>th</sup> January 2024, on the understanding that the Clients would make additional changes to the said Agreement, to which 1<sup>st</sup> Client did make minor changes to the scope of work. Changes that neither varied nor affected the value of the properties as had been discussed initially.
32. It was further submitted that at no point during the making of the said changes did the Advocates reject or express dissatisfaction or reservation with the Amended Agreement. The Advocates went on further to execute the instructions of the Client.
33. The Clients relied on Section 120 of the *Evidence Act*, and the following cases; Pickard v Sears 112 ER 179, Serah Njeri Mwabi v John Kimani Njoroge (2013) eKLR, Rachuonyo & Rachuonvo Advocate v National Bank of Kenya Limited [2021] eKLR, Owino & Co. Advocates v Kisaka [2023] KEELRC 2325 (KLR), the Court of Appeal in Tropical Treasure Limited v Mangi *& 3 others (Civil Appeal 18 of 2021)* [2023] KECA 1187 (KLR) (6 October 2023) (Judgment).
34. The Clients further submitted that the vague, ambiguous phrase "it would be grateful if you could sign" should have been construed against the drafter of the agreement, that is, the Advocates. The client relied on the case of Kennedy Kangaya Isiundu and 2 others v West Kenya Sugar Company Limited



ELRC No. 17 of 2023 (Consolidated) (delivered on 27/4/2023), Isindu & 2 others v West Kenya Sugar Company Limited [2023] KEELRC

35. The Clients further submitted that the Advocates' claim is caught up by the doctrine of acquiescence and waiver to the extent that he acquiesced to the legal fees stated in the Retainer Agreement, and waived his right to complain when he accepted, executed, and took up the instructions without complaint. He further waived his right to claim that the agreement ought to have been signed for it to have been enforceable, both expressly by the existence of clause 5 thereof and by his conduct hereinabove demonstrated.
36. As such, the Clients submitted that the Parties herein were bound by the varied terms of the Retainer Agreement and were estopped from claiming that there is no valid retainer agreement existing, and from claiming any further legal fees. Due to the fact that the Advocate failed to seek any amendment or variation of the legal fees payable, his inaction amounted to acquiescence for which the equitable remedy of estoppel should issue. His acquiescence further proves that the legal fees were not premised on or attributable to the value of the properties comprising the dispute.
37. Further, the Clients contended that the Advocates' acquiescence and acceptance of the Retainer Agreement notwithstanding their conduct of continuing to act as per the scope of work listed on the amended Retainer Agreement as have been in-depth portrayed in the above sub-issue, amounted to a waiver of the claim that there is no existing Retainer Agreement unless the same is executed.
38. Further, it was submitted that the inclusion by the Advocates of the Clause 5 in the contract states that the execution of the agreement was not necessary. Therefore, the Advocates waived their right to have the execution thereof as a condition precedent to the validity thereof.
39. The Clients relied on the case of Yusuf Mohammed Jiwa t/a Jiwa & Anor v Mwangi & 2 Others [2024] KECA (KLR), Halsbury's Laws of England, vol 16 [Butterworth's, 4th Ed Reissue, 2000] para 924, English case of Duke of Amherst vs. Earl of Leeds 41 ER 886, 888 [1846], the Supreme Court of India in the case of Chairman, State Bank of India & Anr. Vs. M.J. [2022] 2 SCC 301.
40. Further reliance was sought in the Court of Appeal case of Kenya National Assurance Co Ltd v Kimani & another [1987] eKLR, Bilita Wambui Kiarie v Embakasi Ranching Company Ltd [2022] eKLR, the Court of Appeal in Mohamed v Walker Kontos Advocates & another (Miscellaneous Application E008 of 2020) [2022] KEHC 16797 (KLR) (Civ) (22 December 2022) (Ruling).
41. The Clients also submitted that even though execution is generally the most straightforward way to demonstrate the existence of a valid, enforceable agreement, an unsigned agreement can still be valid and enforceable in various circumstances, particularly when the parties' conduct indicates acceptance of the terms. By virtue of the fact that the parties acted in accordance with the terms of the said Agreement, that aspect actually confers validity and enforceability to the said agreement. Further, that lack of a signature in order to communicate acceptance of an Offer is not, of itself, a barrier to a legally binding contract coming into effect.
42. Further, the Clients relied on the following cases; Kakuta Maimai Hamisi, Peris Pesu Tobiko v Independent Election and Boundaries Commission and Returning officer Kajiado East Constituency 2017 (eKLR), Reveille Independent LLC vs. Anotech International (UK) Ltd [2016] EWCA Civ 443 (Elias, Underhill LJJ & Cranston J), Erick Barasa Makokha & 2 others v Neema Ya Mungu Investment Co Ltd [2021] eKLR, Majanja Luseno and Co. Advocates vs Leo Investments Ltd and Another (2017) eKLR, Wahome & Akedi Advocates v Migwi & 2 others (Sued as Interim Administrators of the Estate of George Irungu Karanja - Deceased) (Miscellaneous Application E248 of 2023) [2024] KEHC 8011 (KLR) (Family) (21 June 2024) (Ruling)



43. The Clients also submitted that the dispute upon which the taxation emanated from was a highly contentious matter, wherein the contributions as to the amounts claimed is still in dispute, and is yet to be determined by the Court. Again, there has been no valuation attached to the suit properties in issue.
44. It was also submitted that the contending parties in the matter are in contest over the ownership of the investment (land and movable assets), the extent of the investment, and the contribution thereof. It is therefore a matter of fact that the value of the suit property is unascertainable. As such, in the circumstances, in the event there was no valid enforceable Retainer Agreement, the taxing master was right in exercising his discretion as he did in assessing the instructions fees. An important tenet in determining instruction fees is to ensure that the value of the work of the Advocate is commensurate with the fees asked for; nothing more and nothing less.
45. The Clients also relied on the Supreme Court in *Petition No. E011 of 2023 Kenya Airports Authority vs Otieno Ragot & Company Advocates, Joreth Ltd vs Kigano & Associates* [2002] 1 E.A. 92, the *Estate of Ogilvie: Ogilvie –vs Massey* (1910) P 243, *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W Niuguna & 6 others* [2006] eKLR
46. The above are the arguments for and against the two References. This court has carefully considered the pleadings herein, the rival written submissions, and the relevant provisions of law, together with the cited authorities, and finds the issues for determination are as follows;
  - i. Whether the purported retainer agreement relied upon by the client is valid and enforceable under section 45 of the Advocates Remuneration Act.
  - ii. Whether the Clients are entitled to the orders sought, including the reassessment of fees or the enforcement of the purported retainer agreement.
  - iii. Who should bear the cost of the instant application.

**Validity of the retainer agreement.**

47. Section 45 of the *Advocates Act* provides inter alia for the term ‘retainer agreement’ :
  45. Agreements with respect to remuneration
    - (1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may-
      - a. before, after, or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;
      - b. before, after, or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction fee in respect thereof or his fees for appearing in court or both;
      - c. .... and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized on that behalf.”



48. The Court in the case of *Kakuta Maimai Hamise v Peris Pesi Tobiko, Independent Electoral and Boundary Commission & Returning Officer Kajiado East Constituency* [2017] eKLR reiterating this provision observed as follows:

“The issue of validity of agreements between advocates and clients with respect to remuneration was dealt with by Ochieng, J in *Ahmednasir Abdikadir & Co. Advocates vs. National Bank of Kenya Limited (2)* [2006] 1 EA 5 in which the learned Judge held that reading of section 45(1) of the *Advocates Act* reveals that the agreements in respect of remuneration would be valid and binding on the parties thereto provided that the agreements were in writing and signed by the client or his agent duly authorized in that behalf. The Court proceeded to hold that an agreement that provides for fees, which was less than the fees provided for in the Remuneration Order was illegal.”

49. Expounding on retainer agreements, the Court in the case of *Sheetal Kapila v Narriman Khan Brunlehner* [2021] eKLR, quoting the case of *Omulele & Tollo Advocates vs Mount Holdings Ltd CA 75 of 2015*, with approval, restated that:

“A retainer means the instruction, employment, or engagement of an advocate by his client. On the other hand, a retainer agreement is merely a contract in writing prescribing the terms of engagement of an advocate by his client, including fees payable. Therefore, it is submitted that while a retainer denotes a relationship between parties, the retainer agreement is merely the physical written document or manifestation of such a relationship...”

50. As with any other agreements, the onus of proving the existence of the retainer agreement lies with he that wishes to enforce it. This is in line with the ordinary rules of contracts and evidence. (See *Kenya National Capital Corporation Limited v. Albert Mario Cordeiro & Another* [2014] eKLR, and Section 107 of the *Evidence Act* Cap 80). Under the proviso to Section 45 (5) of the Act, an advocate who is a party to a retainer agreement and who has acted diligently for the client is entitled to sue and recover for the whole retainer fee should his client default in payment thereof. As long as the advocate has been diligent, his entitlement to the fixed sum is so outright that he need not tax his costs nor give statutory notice to the client prior to his pursuit of the said fee. Consequently, it behooves such an advocate to ensure that the retainer agreement, once made, is reduced to writing.

51. The same onus of proof applies to a retainer. Where a client disowns a retainer or even the existence of a retainer relationship, it is for the advocate who claims under that retainer to prove to the court that such a relationship indeed existed; otherwise, the court will deem that he acted without instructions.

52. The Advocate issued a Deposit Request Note dated 11 January 2024, requesting for up-front payment of 50% of the agreed legal fees in line with Clauses 3 and 4 of the retainer agreement; which invoice, as the court will note, was never revised even at the point of filing the instant suit, which lends credence to the existence of the understanding between the parties at the time. Suffice it to note, the 1<sup>st</sup> Client paid the Deposit Request Note. The same is unequivocally admitted in item No. 46 of the Advocates' bill of costs.

53. On 17 January 2024, six days after the issuance of the Deposit Request Note and two days after payment thereof, the Advocates proceeded to issue a demand notice to the Defendant in the suit which led to the Bill of Costs, detailing all the information the Clients gave to them, including but not limited to the value of the properties affiliated to the Mara Napa Camp.





54. Further, the Advocates proceeded to incorporate a community trust/foundation as per the instructions, given by the 1<sup>st</sup> Client herein.
55. In considering what a retainer is, and what it entails, and in so doing, this court will borrow the words of Justice Gikonyo in the case of Njeru Nyaga & Co. Advocates v George Ngure Kariuki, High Court of Kenya at Nairobi (Commercial & Admiralty Division) Case No. 723 of 2012, where the learned Judge said: -

“This word retainer has attracted serious judicial toiling and rending of minds in a bid to assign it a meaning within the provisions of the *Advocates Act*, probably because of the special position the word occupies in the advocate-client relationship. Although the present case does not fall under Section 51(2) of the *Advocates Act*, the innumerable previous courts’ rendition on the phraseology...where the retainer is not disputed...provide the content of the term “retainer”. “Retainer” in the wider sense entails the instructions by a client or a client’s authorization for a lawyer to act in a case or a fee paid to an advocate to act in a matter during a specified period or a specified matter, or a fee paid in advance for work to be performed by the lawyer in the future. See the Black’s Law Dictionary, 9<sup>th</sup> Edition. The appropriate sense of the word “retainer” as used in the *Advocates Act* and which is relevant to this application was aptly provided by Waweru J and Ochieng J in the cases of NBI HC Misc App No 698 Of 2004 A.n. Ndambiri & Co Advocates v Mwea Rice Growers Multipurpose Co-op Limited, and Owino Okeyo & Co Advocates v Fuelex Kenya Limited [2005] eKLR, respectively. Let me quote what Waweru J said in the former case that;

My understanding of the term “retainer” as used in section 51(2) aforesaid [read...of the *Advocates Act*] is instructions to act in the matter in which the costs have been taxed. I do not, with respect, subscribe to the view that “retainer” means an agreement in writing as to the fees to be paid. Needless to say, where there is such agreement, taxation would hardly be necessary. In the circumstances, I find that there is no dispute as to retainer.”

56. The term “retainer” was also considered in the case of Hezekia Ogao Abuya T/a Abuya & Co. Advocates Vs Kunguru Food Complex Limited Nairobi, Misc. Appl. No. 400/200, where an advocate who had been instructed by a client in a conveyance matter had his Advocate/Client Bill of Costs, taxed and a judgment under Section 51(2) entered in his favour, in an Application by the client to set aside the said judgment inter-alia, on the ground that there was no retainer, Ringera J (as he then was) rendered himself at page 6 therefor: -

“in this case, such a defence is predicated on the client’s understanding of the word “retainer” in that regard, I note that in Black’s Law Dictionary the word retainer is explained as follows: -“In the practice of law, when a client hires an attorney to represent him, the client is said to have retained the Attorney. This Act of employment is called the retainer. The retainer agreement between the client and the Attorney sets forth the nature of services to be performed, costs, expenses, and related matters.”



57. In Stroud's Judicial Dictionary of words and phrases, 1986, Vol 4 at page 2283, it is posited that to retain is "is to keep in pay" "to hire". And in words and phrases legally defined in 2nd Edition Vol 4 by J. B. Sainders (ed), it is posited that: -

"The act of authorizing or employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client: consequently, the giving of a retainer is equivalent to the making of a contract for the solicitor's employment."

58. Further, in the Oxford Advanced Learners Dictionary of Current English, the word retainer is defined in one usage as to secure the services of somebody, especially a lawyer, by paying for them in advance. Therefore, an Advocate duly instructed is retained, and where there is no dispute that an Advocate was duly instructed by the client in any matter, the retainer cannot be said to be in dispute.

59. In the case of Nyakundi & Co. Advocates, the court gave the definition and form of retainer from Halsbury's Law of England, 4th Edition, Reissue at paragraph 99, page 83, where it stated: -

"The act of authorizing or employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client. Thus, the giving of a retainer is equivalent to the making of a contract for the solicitor's employment"

60. Further, the said court pointed out that in the same work, it was further explained that;

"a retainer need not be in writing unless, under the general law of contract, the terms of the retainer or the disability of a party to it make writing requisite. Even if there has been no written retainer, the court may imply the existence of a retainer from the acts of the parties in the particular case."

61. In the instant case, the Advocates contend that there was no retainer between the Clients and the Law Firm of Oyomba Mosota & Wamwea Advocates, and that there was no valid retainer agreement signed. The Clients on their part aver that there was a retainer agreement between themselves and the said Law Firm.

62. From the foregoing case law, a retainer does not have to be in writing, but the same can be inferred from the conduct of the parties or the circumstances of the case. In this case before the court, the 1<sup>st</sup> Client has exhibited enough material before the court to show that an Advocate/Client relationship existed between the clients herein and the said Law Firm of Oyomba Mosota & Wamwea Advocates.

63. Therefore, it is the finding of this Court that there was a retainer agreement between the Clients herein and the Advocates, and the ruling by the taxing master of 22nd January 2025, was not well-founded, wherein he held that there was no retainer agreement.

64. For the above reasons, this court finds and holds that there is merit in the Clients/ Applicants' Application dated 5<sup>th</sup> February 2025, and the said Application is allowed entirely in terms of prayers number 1, 2, 3, and 4 with costs to the Clients/Applicants.

65. However, the court finds no merit in the Advocates/ Applicants' Application dated 6<sup>th</sup> February 2025, and consequently, the said Advocates Chamber Summons Application is dismissed entirely with costs to the Clients/ Respondents.

66. It is so ordered.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAROK THIS 3<sup>RD</sup> DAY OF JULY 2025**



**L. GACHERU**

**JUDGE**

Delivered in the presence of

Elijah Meyoki - Court Assistant

Ms Omamo holding brief Oyomba Advocate/ Applicant/ Respondent

Mr. Odour holding brief Okwach for the client/ Applicant/ Respondent.

**L. GACHERU**

**JUDGE**

