



M/s Kyalo & Associates Advocates v Corat Africa (Environment and Land Miscellaneous Application E057 of 2023) [2025] KEELC 4036 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4036 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E057 OF 2023**

CG MBOGO, J

MAY 22, 2025

BETWEEN

M/S KYALO & ASSOCIATES ADVOCATES APPLICANT

AND

CORAT AFRICA RESPONDENT

RULING

1. Before me for determination is the chamber summons dated 11th June, 2024 filed by the applicant, and it is expressed to be brought pursuant to Articles 50 and 159 (2) of the Constitution of Kenya, paragraphs 11 and 12 of the Advocates Remuneration Order seeking the following orders: -
 1. That this honourable court be pleased to set aside the ruling of the taxing master dated 28th May, 2024 dismissing the Applicant's Advocates Bill of Costs dated 31st July, 2023 and 18th August, 2023.
 2. That the Bills of Costs dated 31st July, 2023 and 18th August, 2023 be remitted before any other Taxing Master with appropriate directions for taxation and consideration of the applicant's document in support of the Advocate-Client Bills of costs.
 3. That the affidavit in support of the Advocates-Client Bills of Costs annexed be deemed as duly and properly filed and served.
 4. That the costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of Kyalo Mbobu, advocate, sworn even date. The learned counsel deposed that his law firm filed the Advocate-Client Bill of Costs dated 31st July, 2023 and 18th August, 2023 respectively. Further, that the taxing officer failed to exercise her discretion judiciously to allow the applicant to file its documents in support of the Bill of Costs, which exclusion has greatly prejudiced the applicant, failing to take



cognizance of the fact that she closed the window of opportunity for the applicant to file its documents in support, going against her own ruling of 21st March, 2024, and failing to accord the applicant a fair hearing of its case.

3. The advocate deposed that the events of 9th May 2024 only meant that the applicant would be condemned without being allowed to produce the necessary evidence in the matter.
4. The respondent filed grounds of opposition dated 4th December, 2024 challenging the chamber summons on the following grounds: -
 1. The chamber summons contesting the decision to allow the filing of any supporting documents is out of time. Any reference to the High Court against the decision of the taxing officer not to allow the applicant to file supporting documents should have been made at the latest on 23rd May, 2024, being 14 days from the 9th May, 2024, the date when the taxing officer declined to allow the production of additional documents.
 2. The applicant was accorded a fair hearing, having heard the opportunity to file any supporting documents to his bill of costs at the time of filing, but in any case, had the opportunity to do so, at least up to 28th November 2023 when the matter was first set for taxation, and up to 22nd January 2024 with leave of court, when he filed written submissions in support of his bill. The timelines were as follows:-
 - a. The bill was filed on 22nd August 2023. The applicant had an opportunity to file the bill together with supporting documents.
 - b. The bills and the notice of taxation were served on 7th September 2024.
 - c. The respondent filed a replying affidavit sworn on 27th November 2023 in opposition to the bills.
 - d. The applicant filed his written submission in support of the bill of costs on 22nd January 2024.
 - e. On 29th February, 2024, the court issued a ruling date for 21st March 2024.
 - f. The applicant filed his supplementary submissions on 11th March, 2024.
 - g. On 21st March 2024, the court directed the respondent to avail physical copies of the exhibit OKS-1 attached to the replying affidavit of Dr. Oliver Kisaka since counsel had inadvertently uploaded just the 1st page on CTS but referred up to page 10 in the affidavit.
 - h. When the matter was mentioned on 9th May 2024 to confirm compliance, counsel requested 3 days to file fresh supporting documents to the bills.
 - i. The court declined to allow counsel to file fresh documents at this late stage and set the bill for ruling on 28th May 2024.
 3. The high court cannot consider any additional documents that did not form part of the record before the taxing officer. The addition of documents in taxation is a preserve of the taxing officer under paragraph 13A of the *Advocates Remuneration Order*, which the taxing officer correctly declined to admit on 9th May, 2024.



4. The application and the supporting affidavit of Kyalo Mbobu sworn on 11th June 2023 in support of the bill of costs offend the rules of Civil Procedure that parties are bound by their pleadings.
5. Article 159 of the Constitution relied on by the applicant is not applicable in the present circumstances as it was never meant to oust obligations by the counsel to comply with procedural imperatives. Counsel outrightly disregarded procedural imperatives by seeking to file supporting documents to a bill when the matter had already been set down for ruling, the respondent had responded and filed submissions and the applicant had filed submissions in support of the said bills.
6. The application is frivolous and an abuse of the court process for the following reasons:-
 - a. The applicant is a senior advocate who must have been aware of the requirement to adequately support the bill of costs based on Section 107 of the Evidence Act.
 - b. The applicant was already satisfied that the matter could be set down for ruling up to 11th March 2024, when he filed written submissions in support of the bill on 22nd January 2024 and supplementary submissions on 11th March, 2024.
5. The application was further opposed by the replying affidavit of Glory Kendi Kangoria sworn on 29th January, 2025 on behalf of the respondent. The respondent deposed that the application is filed out of time and it is an abuse of the court process. Further, that the applicant had over 8 months since the filing of the Bill of Costs dated 22nd August, 2023 to file supporting documents but failed to do so, and one and half months to comply with the directions of the court from 21st March, 2024 when the directions were issued.
6. The respondent deposed that the application is a challenge to the exercise of the discretion by the taxing officer as per the events that took place on 9th May, 2024 and not the ruling of 28th May, 2024. It was deposed that the applicant had 14 days until 23rd May, 2024 to object to the decision of the taxing officer, but filed the application 35 days after the decision was made. Further, the respondent deposed that the applicant does not suffer any prejudice as it had numerous opportunities to file the documents but failed to do so.
7. The respondent deposed that the applicant is abusing the court process and is intent on frustrating the respondent from recovering the balance of the purchase price that the applicant misappropriated when he acted for the respondent as counsel.
8. The application was canvassed by way of written submissions. The applicant filed its written submissions dated 13th March, 2025 where it raised two issues for determination as follows: -
 1. Whether the application before the court is filed out of time.
 2. Whether the applicant was accorded a fair hearing by the taxing master.
9. On the first issue, the applicant submitted that the instant application was filed within time pursuant to paragraph 11 of the Advocates Remuneration Order, and it challenges the decision of the taxing officer delivered on 28th May, 2024, and not solely on the decision of the taxing officer made on 9th May, 2024.
10. On the second issue, and while relying on the cases of Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others [2014] KESC No. 53 KLR, and Republic v Principal Secretary, Ministry of Transport, Housing and Urban Development Ex Parte Soweto Residents Forum CBO [2019] eKLR, the applicant submitted that the application before the court is not for



- consideration of additional documents but for documents that were meant to be attached but were mistakenly not filed.
11. The respondent filed its written submissions dated 29th January, 2025 where it raised the following issues for determination:-
 - a. Whether the chamber summons dated 11th June, 2024 and filed on 14th June 2024 have been filed out of time? (Ground 1 in the Grounds of Opposition)
 - b. Whether the High Court can consider any additional documents that did not form part of the record before the taxing officer. (Ground 3 and 4 in the Grounds of Opposition).
 - c. Whether the applicant was afforded a fair hearing before the taxing officer (Ground 2 and 5 of the Grounds of Opposition).
 - d. Whether the application is frivolous and an abuse of the court process (Ground 6 of the Grounds of Opposition).
 - e. Who should bear the costs of the application.
 12. On the first issue, the respondent submitted that the application arises out of the taxing officer's decision of 9th May, 2024 declining to allow the applicant an additional 3 days to file documents in support of its bill of costs. Further, it was submitted that the taxing officer did not fail to exercise her discretion, but dismissed the bill of costs for lack of merit. The respondent maintained that the applicant did not abide by the mandatory 14 days period under paragraph 11 of the *Advocates Remuneration Order*. To buttress on this issue, the respondent relied on the cases *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* [2012] eKLR, *Paul Gicheru T/A Gicheru & Co. Advocates v Kargua (K) Construction Co. Ltd* (Civil Case 124 of 2007) [2008] KEHC 2942 (KLR) (15 February 2008) (Judgment), and *Mbivu Mwaura v Thomas Ngarachu Ngugi & 5 others* [2021] eKLR.
 13. On the second issue, the respondent submitted that it is only the taxing officer that has the authority to summon the production of documents and to decline the same. While relying on the case of *Otieno Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR, the respondent submitted that the effect of an order allowing the documents by the applicant at the reference stage would be to restart the case, which would be prejudicial. The respondent further relied on the cases of *Wanga & Company Advocates v Apa Insurance Company Limited* (Civil Appeal 78 of 2009) [2014] KECA 819 (KLR) (24 January 2014) (Judgment), and *Virginia Shaw & Co. Advocates v Minar Katherine Holroyd & another* [2022] eKLR.
 14. On the third issue, the respondent submitted that the applicant was afforded a fair hearing, including a period of up to 8 months but failed to file the additional documents. Reliance was placed in the case of *Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others* [2014] eKLR.
 15. On the fourth and the fifth issues, the respondent submitted that the instant application and the bill of costs is meant to delay the hearing and determination of the main suit in HCCC No. E284 of 2023 as well as to prevent it from claiming money owed by the applicant. The respondent urged the court to dismiss the application. To further buttress on these issues, the respondent relied on the cases of *Ephraim Miano Thamaini v Nancy Wanjiru Wangai & 2 others* [2022] eKLR and *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR.
 16. I have considered the application, the responses as well as the written submissions filed by both parties. I am of the view that the issue for determination is whether there is merit in the application.



17. The circumstances under which this court may or can interfere with the taxing officer's exercise of discretion are now well known. The taxing master must be guided by the principles governing taxation as was held in the leading case of *Premchand Raichand Ltd Another -vs- Quarry services of East Africa Ltd and Another No. 3* (1972) EA 162. The principles laid out are: -
- i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.
 - ii. The taxing master was expected to tax each bill on its merits.
 - iii. The value of the subject matter had to be taken into account.
 - iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously.
 - v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.
 - vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference."
18. In applying the above principles to the circumstances of this case, the applicant seems to contend with the fact that the taxing officer failed to exercise her discretion to allow the filing of additional documents. However, and as correctly alluded by the respondent, the applicant had its fair chance and sufficient time to file documents within the time prescribed. The applicant filed its Bill of Costs dated 18th August, 2023 without any documents in support thereof. Interestingly, the applicant filed its written submissions and supplementary submissions as well. How then was it possible that given the sufficient time, it was unable to file supporting documents.
19. The applicant cannot be heard to fault the court when it did not assist the court in the administration of justice by complying with directions. From the above, it is clear that the applicant is indolent and intent to abuse the court process with the instant application. The chamber summons dated 11th June, 2024 is hopeless, and must fail. The same is dismissed with costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 22ND DAY OF MAY, 2025.

HON. MBOGO C.G.

JUDGE

22/05/2025.

In the presence of:

Ms. Betty Cheron - Court assistant

Ms. Kendi Chamia for the Applicant – present

Ms. Glory Kendi for the Respondent – present

