



**Mutai t/a Mutai JK & Company Advocates v Koech (Miscellaneous Civil Application E006 of 2021) [2023] KEELC 16255 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16255 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
MISCELLANEOUS CIVIL APPLICATION E006 OF 2021**

**MC OUNDO, J**

**MARCH 9, 2023**

**BETWEEN**

**JULIUS K MUTAI T/A MUTAI JK & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**PAUL KIPNGETICH KOECH ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated the February 7, 2022 brought under the provisions of section 48, 49 and 51 of the Advocates' Act cap, the applicant herein seeks for orders that:
  - i. That the Honorable Court do enter judgment against the Respondent for the amount of Kshs. 283,300/= as per the terms of the Certificate of Taxation.
  - ii. That cost of the application be assessed at Kshs 20,000 /= and be ordered to be paid by the Respondent together with the amount in prayer 1.
  - iii. That subsequent to grant of prayer 1 and 2 above, a decree issue against the Respondent for the taxed amount of Kshs. 283,300/= and costs of Kshs 20,000/=.
2. The application is supported by the grounds therein and the annexed affidavit of Mr. Julius Kiprotich Mutai Advocate dated the February 7, 2022.
3. The said application was opposed by the Replying Affidavit and Grounds of Opposition of the Respondent herein where he denied the contents contained in the said application stating that he had neither instructed the Applicant to act for him nor had he been party to the taxing of the bill that gave rise to the sum of Ksh.383,300/=. That the further sum of Ksh 20,000/= being sought by the Applicant for the present and past applications was an amorphous amount that was intended to exploit him.



4. By an order of 18<sup>th</sup> May 2022, the court directed that the application to be disposed of by way of written submissions.

### **The Applicant's submissions.**

5. The Applicant's submission was that the respondent had avoided paying his legal fee despite due service with the Advocate-Client Bill of Costs dated the March 24, 2021 which had been taxed at Ksh. 283,300/=. That because the Respondent had failed and/or refused to pay the Taxed Bill of Costs, the applicant had been forced to file the current application to which he sought for Ksh. 20,000/= as costs.
6. The Applicant framed his issues for determination as follows;
  - i. Whether the applicant's notice of motion application dated February 7, 2022 should be allowed.
  - ii. Who should bear the costs of the application?
7. On the first issue for determination, it was the applicant's submission that the respondent continues to exhibit a conduct that gave credence to their application: a stubborn former client who despite taxation having been done, did not want to pay the taxed costs. That this was manifest in his grounds of opposition.
8. That the Taxing Officer had rightly exercised his discretion and taxed the Advocate -Client Bill of Costs dated February 5, 2021 at Kshs. 283,300/= . That the certificate of costs was clear to the effect that the Advocate-Client Bill of Costs dated 5<sup>th</sup> day of February 2021 and lodged by M/S Mutai J.K. & Co. Advocates had been taxed on the 8<sup>th</sup> day of September 2021 and allowed as against the respondent in the sum of Ksh. Two hundred and eighty-three thousand, three hundred (283,300/-).
9. That the respondent did not dispute the Taxing Officer's decision and since there was no Reference against his ruling dated September 8, 2021, the court could go ahead and enter judgment against the respondent. Reliance was placed on the decisions in Lubullellab & Associates Advocates vs. W.N. K. Brothers Limited [2014] eKLR , Daly & Figgis Advocates vs. Homelex Limited [2013] eKLR which cited the case of Abmednassir Abdikadir & Co Advocates vs. National Bank of Kenya Ltd (2006) eKLR as well as the provisions of section 51 (2) of the Advocates Act to submit that unless set aside or altered, the Advocate-Client Bill of Costs in respect of the same suit, having already undergone the scrutiny of a Taxing Officer who had exercised discretion to arrive at a determination, such decision, was final and binding on the concerned parties.
10. The Applicant thus sought that judgment be entered against the Respondent for the amount of Kshs 283,300/= as per the terms of the Certificate of Taxation to enable the Applicant instruct auctioneers to ensure that the fees as taxed, and the costs of this application, are duly paid.
11. In relation to the question as to which party should bear the costs of the application, it was the Applicant's submission that costs of the application be borne by the Respondent to the tune of Kshs. 20,000/= to compensate the Applicant for both applications filed to tax the Advocate-Client bill of costs and the present application seeking judgment to be entered against the Respondent.
12. The Applicant sought for the application dated February 7, 2022 to be allowed as prayed.

### **The Respondent's submissions**

13. In opposition to the applicant's application, the respondent herein submitted that despite there being an application for judgment against him to a sum of Ksh. 283,300/= being monies taxed on an



Advocate-Client Bill of Costs, yet the Applicant herein never represented him at all in respect to ELC No. 74 of 2017. That the Applicant was therefore a stranger to him. That he had never interacted with him during the proceedings in respect of Case No. ELC No. 74 of 2017. That the Applicant was thus decisively intent on harvesting from where he never sowed.

14. It was his further submission that the purported Draft Advocate-Client Bill of Costs was ill-conceived by the Applicant as the same was devoid of any record of proceedings to buttress the alleged case No. ELC No.74 of 2017.
15. That the Applicant was insincere in his claim for the alleged Advocate-Client Bill of Costs in the sum of Kshs. 283,300/= and thus, the Court should not to grant him the reliefs/prayers sought herein.
16. That the alleged taxation was executed and/or done by the Taxing Master ex-parte and/or unilaterally, since he was never informed and/or served with Taxation Notice wherein after the applicant had proceeded and unilaterally obtained the Certificate of Taxation issued on the 2<sup>nd</sup> day of December, 2021 wherein he had filed the current Application.
17. That the Court do justice and exercise its unfettered judicial discretion to find and hold that the Applicant had totally failed to prove his claim and accordingly dismiss it with costs to the Respondent.

### **Determination**

18. I have considered the application herein, the replying affidavit, grounds of opposition, the submissions and the authorities cited.
19. The applicant has sought for judgment against the respondent for a sum of Ksh. 283,300/= being monies taxed on an Advocate-Client Bill of Costs. The respondent on the other hand has alleged that the applicant herein never represented him at all in respect to ELC No. 74 of 2017 and was therefore a stranger to him as he never interacted with him during the proceedings in respect of Case No. ELC No. 74 of 2017.
20. That respondent further alleged that the taxation of the Advocate-Client Bill of Costs in the sum of Kshs. 283,300/= was executed and/or done by the Taxing Master ex-parte and/or unilaterally, since he was never informed and/or served with Taxation Notice.
21. I find the issue for determination herein being whether the applicant's application dated February 7, 2022 is merited.
22. I have perused the proceedings that led to the impugned Advocate-Client Bill of Costs lodged by M/S Mutai J.K. & Co. Advocates (the Applicant herein) which had been taxed on the 8<sup>th</sup> day of September 2021 and allowed as against the respondent in the sum of Ksh. Two hundred and eighty-three thousand, three hundred (283,300/=).
23. In particular, the court has perused the court record and the annexure 'JKM1' in a supporting affidavit to the application to tax the Advocate-Client Bill of Costs where I noted that the same was a Notice of Appointment of Counsel by the Respondent dated the December 14, 2017.
24. I have also looked at the respondent's grounds of opposition dated the June 18, 2021 and replying affidavit dated June 21, 2021 to the said application wherein the respondent had averred as follows:

The allegation contained in paragraph (6) of the applicant's affidavit is not true as I did paid (sic) part payment of Ksh. 10,000/= on the 14/12/2017 and annexed here to is a copy of the same marked "PK1"



.....The applicant's deserve no further remuneration as I paid his firm a further sum of Ksh. 8,000/= vide M-pesa annexed here to in (sic) a copy of the relevant M-pesa statement and marked "PK3".....

That I swear this affidavit in support of my humble plea that the applicant's application and the draft bill of costs be dismissed with cost to the respondent."

25. The above captioned sentiments clearly show that the respondent herein had instructed the applicant's firm to act for him and was privy to the taxation proceedings and therefore he cannot turn around now to claim that he had neither instructed the applicant's firm or that he had not been notified of the taxation proceedings.

26. Section 51(2) of the Advocates Act provides as follows;

"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."

27. A reading of the said provision of the law is clear that it gives the court the jurisdiction to enter judgment provided the Bill of Costs has been taxed and the Taxing Master has issued a Certificate of Costs. The Bill of Costs having been taxed and there having been issued a Certificate of Costs by the Taxing Master, and the said certificate having not been appealed against, set aside or varied, I find that all the conditions as set out in section 51(2) of the *Advocates Act* have been satisfied and that this is a suitable case for the court to exercise its discretion in favour of the Applicant.

28. Indeed in the case of *Lesinko Njorge & Gathogo Advocates vs. Invesco Assurance Co. Ltd* [2021] eKLR the court had held as follows;

"The procedure provided in section 51(2) of the Advocates Act aids expeditious disposal of cases relating to recovery of advocate-client costs as long as: (1) the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs; (2) the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate. The application may be commenced by way of a notice of motion which in law is potent tool for originating a suit."

29. In this regard I therefore pass the following orders;

- i. I find that the application dated the February 7, 2022 is merited and I therefore proceed to enter judgment against the Respondent for the certified sum of Kshs. 283,300/=.
- ii. There shall be no order as to costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 9<sup>TH</sup> DAY OF MARCH 2023**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

