



**Muoka v SBM Bank Limited (Formerly Fidelity Commercial Bank Ltd) (Miscellaneous Cause E583 of 2022) [2025] KEHC 78 (KLR) (Commercial and Tax) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 78 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CAUSE E583 OF 2022**

**A MABEYA, J  
JANUARY 16, 2025**

**BETWEEN**

**PHILLIP JOHN MUOKA ..... ADVOCATE**

**AND**

**SBM BANK LIMITED (FORMERLY FIDELITY COMMERCIAL BANK LTD) ..... CLIENT**

**RULING**

1. For determination is the client's reference application dated 28/8/2023 filed inter alia under part 1 section 11(1) and (2) of the [Advocates Remuneration Order](#) 1962 and section 45(6) and 48 of the [Advocates Act](#) CAP 16.
2. The client prayed for an order to review, vary and/or set aside the taxing officer's ruling delivered on 23/8/2023. The application is premised on the grounds that the taxing officer delivered a ruling taxing the advocate's bill of costs dated 7/7/2022 at Kshs.1,154,771.88/=.
3. The client contended that the taxing officer misdirected herself and acted contrary to the established principle which postulates that where there is a fee agreement between the advocate and client, the Court lacks the jurisdiction to tax a bill of costs.
4. The client further contended that unless the ruling delivered on 23/8/2023 is reviewed and/or set aside, the advocate stands to unjustly enrich himself at the client's expense and that it is in the interest of justice that the Court allows the application.
5. The advocate opposed the application through a replying affidavit sworn by Phillip John Muoka. He averred that the alleged settlement agreement was a final agreement as to all matters conducted and



- handed over as at 26/3/2018 and was not an agreement for further work handled by the advocate on behalf of the client from the date of termination/handing over of the previous contract.
6. That the agreement did not relate to HCC No.465 of 2012 L.N Property Development Limited & Another vs. Fidelity Commercial Bank Limited which the advocate handled on behalf of the client after the settlement agreement and on fresh instructions by the client. The advocates prayed for the dismissal of the application in the interests of justice.
  7. The client filed a further affidavit sworn on 19/2/2024 by Kevin Kimani, its Legal Manager. He averred that the advocate breached the terms of the settlement agreement by failing to release all files in his possession within ten days from 17/4/2018 and now seeks to benefit from his wrong doings and that the client did not issue any further instructions to the advocate with regard to any matter after the settlement agreement was agreed upon and executed by both parties.
  8. Further, that if the advocate acted on behalf of the client in any matter, then the same was done without the client's instructions and in contravention to the settlement agreement.
  9. In response to the further affidavit, the advocate filed a further replying affidavit dated 28/5/2024 sworn by himself. He reiterated that the client issued fresh instructions with regard to the matter in issue and that there is no mention of this suit nor is there an agreement of the work done on it in the alleged settlement agreement.
  10. The advocate filed written submissions dated 28/5/2024 while the client filed submissions dated 30/5/2024. The Court has considered the rival contestations and submissions on record.
  11. A background to this dispute is that the advocate filed an advocate-client bill of costs dated 7/7/2022 arising from the advocate's representation of the client in HCC 465 OF 2012. The taxing master taxed the said bill of costs at Kshs. 1,154,771.88 vide a ruling dated 23/8/2023.
  12. The taxing master noted that there was a retainer agreement between the parties whereby the parties agreed to settle legal fees at Kshs.30,000,000/-, that however, the legal fees in HCC 465 of 2012 was not covered in the retainer agreement and was therefore not considered in the circumstances.
  13. The retainer/settlement agreement between the advocate and the client is dated 26/3/2018 and is produced as 'KK-1' in the client's supporting affidavit. In the agreement, the advocate agreed to cease acting in all matters entrusted to the firm by the client including all cases pending in court, the advocate would hand over to the client all files and documents together with a status report in relation to all matters handled by them and the client would pay the advocate the sum of Kshs.30,000,000/- within 20 days of signing the agreement where-after the advocate would hand over all files within 10 days.
  14. Further the advocate accepted the said sum of Kshs.30,000,000/- in full and final settlement of all fees due for all services rendered to the client.
  15. My understanding of the retainer agreement is that the advocate accepted the sum of Kshs.30,000,000/- in final settlement for all the legal fees owed to it by the client for representing it in various matters. Once the advocate received the said sum, it was his obligation to handover all the files and documents within 10 days from receipt of the amount.
  16. The record indicates that the advocate received the aforementioned payment from the client and that they released some files to the client's newly appointed advocates. The suit, HCC 465 of 2012, in which the advocate claims legal fees in his bill of costs was concluded vide a judgment dated 16/7/2019 and the advocate raised a subsequent fee note dated 3/12/2020.



17. This was a suit filed in 2012 and although it came to conclusion in 2019, it does not mean that it was not covered under the settlement agreement between the parties. Paragraph 5 of the settlement agreement specifically states that: -

“The advocates accept the said amount of Kshs.30 million in full and final settlement of all fees due for all services rendered to Fidelity Commercial Bank and/or the Bank.”

18. The wordings of the agreement are clear and unambiguous. The legal fees paid thereto covered all legal services that the advocate rendered and all files were supposed to be returned to the client. This includes HCC 465 of 2012. In effect, the advocate ceased acting for the client. If there was an intention to exclude any other pending matter, this included, nothing was easier than to expressly state so in the agreement. Now that it was not excluded, there was an intention that the file was also included in the agreement.

19. Parties are bound by the terms of the contract that they enter into. As the advocate did not produce evidence that he was further instructed to represent the client in HCC 465 of 2012, he cannot claim more legal fees from the client as this was already covered in the settlement/retainer agreement.

20. Under section 45(6) of the *Advocates Act*, it is stated that: -

“Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.”

21. In view of the foregoing, I am of the view and so hold that the taxing master was bereft of the jurisdiction to tax the advocate’s bill of costs as the legal fees payable was subject to a fee agreement between the parties. I agree with the submission of the client that the taxation proceedings were defective and improper in light of the settlement agreement between the parties.

22. Accordingly, the application is allowed and the ruling dated 23/8/2023 is set aside with costs awarded to the client.

It is so ordered.

**SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF JANUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JANUARY, 2025.**

**F. GIKONYO**

**JUDGE**

