



O&M Law LLP Advocates v Eveready East Africa Plc (Miscellaneous Application E095 of 2022) [2025] KEHC 1875 (KLR) (Commercial and Tax) (21 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E095 OF 2022
CJ KENDAGOR, J
FEBRUARY 21, 2025**

BETWEEN

O&M LAW LLP ADVOCATES ADVOCATE

AND

EVEREADY EAST AFRICA PLC CLIENT

(Being a ruling on a reference application lodged against the taxation and award of costs made by Hon. E.M Nyakundi, Deputy Registrar on 31st August, 2022)

RULING

1. O&M Law LLP Advocates presented a Bill of Costs dated 4th February, 2022, seeking a total of Kshs.1,757,998/= arising from a non-contentious matter, specifically, a legal audit for Client - Eveready East Africa PLC, which opposed the Bill.
2. The Taxing Master delivered a Ruling on 31st August, 2022 in which she allowed the Bill of Costs at the sum of Kshs.2,610,939.60/=. The breakdown is as below;
 - (i) Instruction Fees - Kshs.1,500,000.00
 - (ii) Legal Fees - Kshs. 540.00
 - (iii) Sub-Total - Kshs.1,500,540.00
 - (iv) 50% of Part B - Kshs. 750,270.00
 - (v) Sub-Total - Kshs.2,250,810.00
 - (vi) 16% VAT - Kshs. 360,129.60TOTAL - Kshs.2,610,939.60



3. The Client- Eveready EA PLC was aggrieved with the decision of the Taxing Master and lodged a reference via a Notice of Motion Application dated 12th June, 2023, pursuant to leave granted that extended time for filing of the reference. This Ruling pertains to this reference application in which the Client/Applicant has sought the following orders;
 - i. That the Ruling and Award by the Taxing Master made on 31st August, 2022 be set aside;
 - ii. That the Court re-taxes or submits the Advocate – Client Bill of Costs dated 4th February, 2022 for fresh taxation
4. The reference is opposed, the Advocate/Respondent filed a Replying Affidavit sworn on 6th December, 2023.
5. Parties filed submissions which I have duly considered. The Advocate/Respondent submissions are dated 11th June, 2024 and the Client/Applicant’s submissions are dated 14th June, 2024.
6. The issue for determination is whether this Court should set aside the ruling and award by the Taxing Master.
7. The principles for setting aside the decisions of Taxing Master were well established by the Court of Appeal in the case of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR that:

“ On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”
8. In making the award, the Honourable Taxing Master determined that there was no retainer agreement between the parties. She taxed the Bill according to the Advocates Remuneration Order 2014, specifically Schedule 5 Part II.
9. The Client/Applicant’s main contention in the Reference application is that the instruction fees were taxed too high. They submitted that the services rendered were non-contentious and that the Advocate/Client only submitted a Preliminary Report. They further contend that the Taxing Master regarded the legal audit as a novel matter when it was neither novel nor complex They also criticized the 50% increase granted by the Taxing Master.
10. The Advocate/Respondent submitted that the legal audit conducted by the Applicant was the first of its kind under the new legal regime. They also noted that the audit raised novel issues and required the gathering of various documentation that had not been previously compiled or managed for such a purpose. They emphasized that the overall process of conducting the legal audit required considerable effort and was time-consuming, involving numerous man-hours to retrieve, compile, and analyze documents and company records.
11. I have reviewed the documents that were availed by the parties herein before the Taxing Master. The Client/Applicant instructed the Advocate/Respondent on 16th February, 2017 and the Advocate/Respondent transmitted a report that is titled Preliminary Legal Audit Report that is dated 29th January, 2019. The report indicates that it was being prepared in connection with conducting a legal audit of the company’s compliance with applicable laws and identifying material legal issues pertaining to the company and its business.



12. I have reviewed the report while considering the various positions taken by the parties involved. The scope of the Report is captured as follows;
 - 2.2.1 Corporate information
 - 2.2.2 Financial arrangements and borrowing
 - 2.2.3 Intellectual property
 - 2.2.4 Material assets
 - 2.2.5 Litigation
 - 2.2.6 Employment
 - 2.2.7 Property
13. Each section provided a comprehensive overview of the documents that had been made available for review by the Advocate, along with a summary of the findings derived from these documents. The preliminary report was submitted about two years after the instructions were given. The report speaks for itself, indicating that the process required a considerable investment of time and resources to retrieve, compile, and analyze a vast array of documentation and company records.
14. The submitted report was preliminary; ‘preliminary’ connotes an initial summary of findings and is often created before a final report. Parts of the report indicate that the client had yet to avail documents regarding trading contracts and commitments, financial arrangements and borrowing, material assets, employment pension and social security, and litigation. In reviewing the work completed, I have examined the highlighted outstanding documentation in relation to the thorough evaluations that have already been conducted.
15. Schedule 5 Part II of the Advocates Remuneration Order 2014 provides the considerations for instructions under this part;

“Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity of the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.
16. A legal audit demands careful handling of information due to the necessity for accuracy and thoroughness in the review process. The report, in this case, indicates that a significant amount of work was dedicated to the legal audit, reflecting analysis of legal documents, compliance assessments, and an evaluation of internal controls among others. The Taxing Master took into account the effort invested in the services provided as outlined in the Schedule referenced. I find that the sum of Kshs.1,500,000/= was sufficient, and the Taxing Master did not err in principle by allowing this amount.
17. After reviewing the award for instructions, I considered the 50% increase. I make a finding that the taxing master mistakenly awarded a 50% increase, which is not applicable under Schedule 5 Part II.

Disposition

18. For the reasons I have set out above, I make the following orders with regards to the Client’s Reference Application dated 12th June, 2023;



- i. The Ruling and award by the Taxing master made on 31st August, 2022 is upheld save for the 50% increase.
- ii. For avoidance of doubt, the Advocate/Client Bill of Costs dated 4th February, 2022 is allowed in the following terms;
 - Item 1 – as drawn at Kshs. 1,500,000/=
 - Item 2 – Taxed off
 - Item 3 – VAT at 16% on items 1 & 4
 - Item 4 – Kshs. 540/=
- iii. I award interest at a rate of fourteen per cent (14%) per annum on (ii) above. Paragraph 7 of Part I of the Advocates (Remuneration) Order envisages a thirty-day period before interest can apply; this interest will accrue after 30 days from the date the costs were first determined on 31st August, 2022 till payment in full.
- iv. Each party shall bear their costs of this application.

It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 21ST DAY OF FEBRUARY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms Obiri Advocate for Client/Applicant

Ms Chitala Advocate for Advocate/Respondent

COMMERCIAL MISC. E095 OF 2022 RULING	0
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