



Ondeng v Okoth t/a GS Okoth Advocates (Miscellaneous Application E262 of 2024) [2025] KEHC 9803 (KLR) (3 February 2025) (Ruling)

Neutral citation: [2025] KEHC 9803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E262 OF 2024
AB MWAMUYE, J
FEBRUARY 3, 2025**

BETWEEN

DAVID OWINO ONDENG APPLICANT

AND

GEORGE SHANE OKOTH T/A GS OKOTH ADVOCATES RESPONDENT

RULING

1. The applicant has moved this court through their application dated 20th June 2024 where they are seeking the following orders: -
 - i. Spent
 - ii. The Respondent be ordered to immediately deposit into this Honourable Court the sum of Kshs 4,624,064.70
 - iii. The Respondent be compelled to file his Advocate/Client Bill of costs for the services he rendered to the Applicant in CMCC No 437 of 2018 David Owino Ondeng v Kosetiony Kipruto Tinderet & others in compliance with Schedule 7 of the [Advocates Remuneration Order, 2014](#) before the Deputy Registrar for taxation for the purposes of ascertaining the quantum of his fees.
 - iv. The Respondent be ordered to give a cash account and more particularly of the moneys he received from the Applicant towards deposit for his fees and disbursements prior to the receipt of the decretal sums from the Honourable Attorney General.
 - v. Costs of the application.
2. The Respondent opposes the application. He maintains that the issues raised concern his professional conduct and should be addressed by the Advocates Complaints Commission under section 53(4) of the [Advocates Act](#).



Issues for Determination

3. The issues arising for determination includes:
 - a. Whether the Respondent's objection under section 53(4) of the *Advocates Act* precludes this Court from hearing the application or requires referral to the Advocates Complaints Commission.
 - b. Whether, on the merits, the Respondent must be compelled to file his Advocate/Client Bill of Costs for the services he rendered to the Applicant in CMCC No 437 of 2018.
 - c. Whether the Respondent must be ordered to render a cash account and disclose/list the Kshs 4,626,064.70 held on the Applicant's behalf.
 - d. The proper disposition of the sum Kshs 4,626,064.70 – specifically, whether it should be deposited with the Court or released to the Applicant after payment of any taxed fees due to the Respondent.

Analysis

Jurisdiction and Section 53(4) Objection

4. The Respondent's principal objection is that the Applicant's grievances are properly the subject of a complaint to the Advocates Complaints Commission under section 53 of the *Advocates Act*, and not of court proceedings. Section 53(4) provides that it:
 - “ 4. shall be the duty of the Commission to receive and consider a complaint made by any person, regarding the conduct of any advocate, firm of advocates, or any member or employee thereof...”
5. Thus, the *Advocates Act* indeed establishes a Complaints Commission to investigate allegations of misconduct or negligence by advocates. However, this statutory system does not deprive the High Court of jurisdiction to determine disputes over fees and client funds. Notably, section 53(4)(e) expressly anticipates that if the Commission finds a complaint to have substance but not to involve a disciplinary offence, and the appropriate remedy is to “refer the matter to the courts for appropriate redress,” the Commission must so advise the complainant.
 - “(e)if it appears to the Commission that there is substance in a complaint but that the circumstances of the case do not disclose a disciplinary offence with which the Disciplinary Committee can properly deal and that the Commission itself should not deal with the matter but that the proper remedy for the complainant is to refer the matter to the courts for appropriate redress the Commission shall forthwith so advise the complainant.”
6. In other words, complaints that require civil adjudication are within the court's jurisdiction, while the ACC deals primarily with disciplinary or professional misconduct issues.
7. In the present case, the Applicant's grievance is that his Advocate has not rendered a bill of costs or account and has retained a large sum of trust funds. These are financial and contractual issues between client and advocate, not charges of unethical conduct warranting discipline. The Applicant is not seeking punishment of the Advocate, but simply exercise of his right to see his account and recover the net balance after lawful costs. This is squarely within the scope of the High Court's powers and not barred by the *Advocates Act*.



8. Guidance can be drawn from *Gikeria & Vadgama Advocates v Okali* 2023, in which the Environment & Land Court dealt with a client’s complaint of alleged negligence by his counsel in the context of taxation of costs. In that case the Court explicitly acknowledged section 53(4) and the role of the ACC, but nonetheless held that it could not strike out a Bill of Costs on account of the client’s allegations of negligence. Instead, the Court noted, any such issues would arise during taxation of the bill by the Taxing Master. Specifically, the ELC observed that

“a client who alleges negligence against an advocate has recourse under the *Advocates Act*, which under section 53 establishes the Advocates Complaints Commission. Section 53(4) of the *Advocates Act* provides... [but] this Court... cannot strike out a Bill of Costs on account of claims of negligence by the client... that issue can only be considered by the Taxing Master during taxation of the Bill”

9. The reasoning is that section 53(4) contemplates the Commission’s investigating complaints and, if the matter is one for courts, advising referral, but does not prevent the Court from proceeding to enforce a client’s right to costs or to question an advocate’s actions in that process.

10. Accordingly, the objection under section 53(4) is not fatal. The instant application is properly before this Court. The Court has full jurisdiction to order discovery of accounts and deposition of trust funds under Order 52 of the *Civil Procedure Rules*. Indeed, Rule 4(1) of Order 52 expressly empowers the Court;

“4. Power to order advocate to deliver accounts and documents [Order 52, rule 4]

(1) Where the relationship of advocate and client exists or has existed the court may, on the application of the client or his legal personal representative, make an order for—

- (a) the delivery by the advocate of a cash account;
- (b) the payment or delivery up by the advocate of money or securities;
- (c) the delivery to the applicant of a list of the money or securities which the advocate has in his possession or control on behalf of the applicant;
- (d) the payment into or lodging in court of any such money or securities;
- (e) the delivery up of papers and documents to which the client is entitled.”

11. It also allows the Court to order delivery of client papers and documents. If the advocate claims costs, Rule 4(3) authorizes the Court to order taxation and payment of those costs and to protect the advocate’s lien as it deems fit. These statutory and procedural provisions assume that courts adjudicate fee and trust disputes; they would be rendered ineffective if section 53 required all such matters to be heard by the ACC.

12. For completeness, it is noted that if the ACC were to treat any aspect of this case as a complaint, it could conclude that the proper redress is judicial and hence send the Applicant to court. There is no



reason to delay the lawful process. The Respondent's reliance on section 53(4) is therefore misplaced. The Court proceeds to determine the application on its merits.

Duty to File an Advocate–Client Bill of Costs

13. The Applicant asks the Court to compel the Respondent to file his Advocate/Client Bill of Costs for services in CMCC No 437 of 2018. At common law and by statute, an advocate is obliged to render accounts for his fees and to allow taxation of those fees at the conclusion of his retainer (or upon its early termination). As the Court of Appeal held in *Machira & Co. Advocates v Magugu 2012*, an advocate whose instructions have been terminated “is entitled to immediate payment of his fees for the services rendered. If upon demand the client refuses to pay, he is entitled to file his bill and have it taxed immediately. He does not have to wait until the matter is concluded”. In that case the client had changed advocates mid-litigation, and the Court held that the dropped advocate could file and tax his advocate-client bill forthwith. The present situation is similar: the Applicant engaged the Respondent as his advocate, the retainer has ended, and the Applicant is withholding payment pending these proceedings. By law the Respondent was entitled to draw his bill once his instructions ended, without waiting for final disposal of the case.
14. The Respondent's failure to file a bill or have it taxed, despite his entitlement to do so, lends substance to the Applicant's grievance. The Applicant is not obliged to prepare the Respondent's bill on his behalf – that duty lies on the Respondent. Order 52(4)(1)(a) specifically empowers the Court to order “the delivery by the advocate of a cash account,” and (b) to deliver money or securities. It is implicit that the Court can likewise order the Advocate/Client Bill to be filed. In *Milly Wairimu Gachau & Others v George Maengwe & Co. Advocates (Nakuru HCC, 30th January 2020)*, the court (Mulwa J.) granted a similar application under O.52 r.4. There the Plaintiffs sought an order directing their advocate to render a cash account and to account for Kshs 1,100,000 held as consideration for a land sale. The Court based its jurisdiction on O.52 r.4, which contemplates precisely the scenario of an advocate holding client funds and being ordered to render accounts.
15. Furthermore, the [*Advocates \(Remuneration\) Order 2014*](#) provides the scale and rules for computing advocates' fees in subordinate courts. Schedule 7 of that Order deals with proceedings in subordinate courts. Part B of Schedule 7 prescribes that where costs are payable between advocate and client, the fees “shall be – (a) the fees prescribed in A above increased by 50%” (with equivalent 50% increases on ordered or agreed fees). Thus, an Advocate/Client Bill must be prepared in accordance with Schedule 7. The Respondent has done none of this, despite continuing to withhold significant trust funds.
16. In sum, the law clearly favors prompt taxation of an advocate's bill when a client no longer resists payment. The Respondent cannot have it both ways – he must either file his bill for taxation or forfeit any lien beyond a just proportion. This Court will compel compliance. The Respondent shall file his Advocate/Client Bill of Costs for CMCC No 437 of 2018 in compliance with the *Advocates (Remuneration) Order 2014 (Schedule 7)* and have it taxed by the Deputy Registrar, as prayed.

Advocate's Lien and Disposition of Funds

17. The remaining Kshs 4,626,064.70 is money that the Respondent is holding on behalf of the Applicant. The Applicant effectively asks that these funds be applied first to any properly taxed fees due to the Respondent, and then any excess be paid to the Applicant. The Respondent, while claiming a lien for his fees, cannot retain more than is necessary. The law of “solicitor's lien” is well settled: an advocate's lien is purely possessory, not proprietary. It enables the advocate to retain a client's papers or funds to secure payment, but once the lien amount (i.e. the fee due) is determined and paid, the lien vanishes and the client is entitled to the balance.



18. Applying these principles, the Kshs 4,626,064.70 can be applied first to the Respondent's taxed costs. The Respondent is entitled to such fees as the Taxing Master will allow. Once the Taxing Master has taxed the bill filed under (ii) above, the taxed amount becomes payable. The Court then directs that this taxed amount be deducted from the Kshs 4,626,064.70 held by the Respondent. The remaining balance – being funds to which the Applicant is legally entitled – must be released to the Applicant without delay. This accords with rule 52(4)(1)(d) of the *CPR*, which contemplates payment into Court or, by implication, transfer to the client, of any such money. There is no justification for the Respondent to withhold any funds beyond his legitimate costs.
19. In summary, the Advocate–Client Bill shall be taxed forthwith and the taxed costs paid. The Kshs 4,626,064.70 held by the Respondent shall be applied to those taxed costs, and any excess returned to the Applicant.

Final Orders

20. In sum, having considered the grounds of the application, the grounds of opposition filed by the respondent, the submissions filed by the applicant and the rival submissions of the respondent, vis a vis the law applicable, I find this application merited, and proceed to order as follows;
 - i. The Respondent is hereby ordered to file his Advocate/Client Bill of costs for the services he rendered to the Applicant in CMCC No 437 of 2018 David Owino Ondeng v Kosetiony Kipruto Tinderet & others in compliance with Schedule 7 of the Advocates Remuneration Order, 2014 before the Deputy Registrar for taxation for the purposes of ascertaining the quantum of his fees.
 - ii. The amount taxed by the Deputy Registrar shall then be deducted from the amount held by the Respondent being Kshs 4,626,064.70 and the remainder (if any) released to the Applicant.
 - iii. No orders as to costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 3RD DAY OF FEBRUARY 2025.

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BAHATI MWAMUYE

JUDGE

