



REPUBLIC OF KENYA



**Isai v Nzioki Mutua & Associates Advocates (Miscellaneous Application
E074 of 2020) [2025] KEHC 3650 (KLR) (Family) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E074 OF 2020
PM NYAUNDI, J
MARCH 21, 2025**

BETWEEN

PETER KIVINDYO ISAI APPLICANT

AND

NZIOKI MUTUA & ASSOCIATES ADVOCATES RESPONDENT

RULING

1. Before this court are two applications. The first one is a Notice of Motion dated 22nd August 2024 seeking the following orders;
 1. That the court enters judgment for the Applicant against the Respondent for the sum of Kshs. 228, 990/= as appears on the Certificate of Taxation dated 21st August 2024.
 2. That the court be pleased to award interest at court rates from the date of certificate of taxation till payment in full.
 3. That costs of the application be provided for.
2. The Summons was premised upon Article 159 (2) of *the Constitution* 2010, Section 51 (2) of the *Advocates Act*, Sections 1A,1B, & 3A and 63 and Order 51 Rule 1 of the *Civil Procedure Act* and was supported by the Affidavit of even date sworn by William Ongoro an advocate practicing in the firm of Ongoro & Agong Advocates.
2. He averred that the Applicant filed a party to party bill of costs dated 16th August 2023. The said bill and notices dated 3rd July 2024 and 18th July 2024 were served on the Respondent. The Taxing Master taxed the bill at Kshs.228,990/=.



3. The second application is a Notice of Motion dated 20th February 2025 filed by the Respondent seeking the following orders;
 1. That this application herein and supporting affidavit be deemed as a response to the Applicant's Notice of Motion (un) dated 22nd August 2024.
 2. That the Honourable Court does find the existence of an error in principle in issuance of the Certificate of Taxation in favour of the Applicant, Peter Kivindyo Isai dated 21st August 2024.
 3. That should the Honourable Court notwithstanding, find in the Applicant's favour, the amount contained in taxation being Kshs. 228,990/= be set off from the amount owed to the Advocates herein by the Applicant, being Kshs. 756,598/= and arising out of a taxation ruling by Hon. Mbulika (Deputy Registrar) dated 30th September 2021 in HC Misc. Application No. E074 of 2020 as consolidated with HC Misc. Application No. E172 of 2021.
4. The application is brought pursuant to Order 51 Rule 10 of the Civil Procedure Rules, Section 1A,1B and 3A of the *Civil Procedure Act* and all enabling provisions of the law and was supported by the Affidavit of even date by Fred Mutua, an advocate practicing in the firm of the Respondent.
5. He averred that the Applicant was his former client. That the supporting affidavit should have been sworn by Peter Kivindyo Isai and not the advocate. He averred that ruling of the Taxing Master dated 16th August 2024 and subsequent Certificate of Taxation dated 21st August 2024 are irregular for the following reasons;
 - a. That he filed a bill of costs against the applicant and his family members after the firm's representation in HCPA No. 1493 of 2003 in which the Hon. Taxing Officer (Hon. Mbulika) awarded the firm the sum of Kshs. 756,598 on 30th September 2021.
 - b. They immediately filed a reference on 9th May 2024 which was dismissed by Justice Riechi.
 - c. The Respondent sought release of his title which order was granted by this court on 18th July 2023 without any protection accorded to them over their fees.
 - d. That they were never served with any bill of costs by the Respondent's advocate. The firm got to know this matter through the Respondent's letter dated 22nd August 2024.
 - e. Having represented the client for over 13 years and not paid any fees, he wrote to the advocates on 5th September 2024 informing them to set off Kshs. 228,990/= from the earlier amount awarded to them being Kshs. 756,598/=.
 - f. That the Respondent owes them Kshs. 1,581,900/= in High Court (Commercial & Tax Division) Misc. Appl No. E448 of 2021 and which application is pending for judgment.
6. That the supporting affidavit dated 22nd August 2024 sworn by William Ongoro shows that the advocate is vindictive, unprofessional, devious and malicious in an attempt to cause them both financial and professional embarrassment, with the counsel knowing that his client owes them money.
7. Peter Kivindyo Isai filed a Replying Affidavit sworn on 24th February 2025. He averred that the application dated 20th February 2025 is fatally defective as it has been brought under the wrong provisions of law and the prayers sought are incapable of being granted. That the notice of motion seeks to review the orders of the court hence the same should have been brought under Order 45 of the Civil Procedure Rules. He deposed that he gave instructions to the firm of Ongoro & Agong Advocates to file a bill of costs dated 16th August 2023. The Bill of Costs and Notices dated 3rd July 2024 and 18th



July 2024 were served on the Respondent. The Respondent did not file a response or attend court to dispute the same and the bill was taxed at Kshs. 228,990/=. That the applicant has not filed a reference to the taxation and the same is valid and is yet to be set aside.

8. He averred that the Respondent's application is meant to deny him the fruits of his judgment. That the Respondent's failure to execute the decree arising from the ruling of Hon. P. Mbulikah should not bar this court from adopting the certificate of taxation dated 21st August 2024. That the application has been overtaken by events.

Analysis And Determination

9. I have considered the two applications, the supporting affidavits and the Replying affidavits. The issues that arise are whether the two applications are merited.

Application dated 22nd August 2024.

10. The Applicant filed of the Bill of Costs which was taxed and a Certificate of Taxation was issued which taxed costs the Respondent has failed and/or neglected to settle. The Respondent was served with the bill of costs but they failed to respond.
11. Although the Respondent has put in a reply to the application dated 22nd August 2024 six months later, I will proceed to determine whether the application has merit. The court notes that the amount taxed which is Kshs. 228,990 is undisputed.
12. The applicable law is found at Section 51(2) of the *Advocates Act* which reads 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.
13. The above mentioned provision was reiterated in the case of *Musyoka & Wambua Advocates versus Rustam Hira Advocate (2006) eKLR* where it was held: -

Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....
14. 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:
 - a. the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
 - b. the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
 - c. 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.
15. In determining whether the court should adopt the amount on the Certificate of Taxation as the judgment of the court it should be satisfied that the certificate of taxation has not been set aside.



16. Reference is made to the case of Lubulellah & Associates Advocates versus N K Brothers Limited [2014] eKLR where the court observed that;

The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation that was issued on 25th November 2012.

17. From perusal of the court record this court is satisfied that the Ruling is uncontested as the Respondent has not moved any court by way of filing a Reference against the ruling nor has the Ruling been set aside, altered, varied and / or reviewed, nor has any appeal been filed.
18. Therefore, no other action is required from this court save to enter judgment as prayed against the Respondent together with interest at the rate of 14% per annum with effect from 21st August 2024 until payment in full.

Application dated 20th February 2025.

19. The Applicant herein has challenged the current Application. In the Applicant's view, the Respondent should have filed a reference. He contends that the application is fatally defective, is bad in law and should not be allowed.
20. Paragraph 11 of the Advocates (Remuneration) Order provides as follows;
1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items to which he objects.
 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of those reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
21. The bill in this matter was taxed on 16th August 2024. Paragraph 11, above, required the respondent within 14 days of the taxation to write and request the taxing master's reasons to the items it objected to in the bill of costs. Within 14 days of provision of such reason, a reference ought to have been filed.
22. In the present case, the client did not seek reasons within 14 days of the taxation.

a reference should be filed before the judge after the reasons for the taxation have been given. Before then, there is no reference that can lie to the judge. This is because the judge shall have nothing to fault the taxing master on or approve him of. From the material placed before this court, there is no reference before this court. The Respondent's application dated 20th February 2025 is hereby dismissed for the reasons above.

23. In concluding, I observe that the Respondent argues that the costs herein should be set off against the money the Applicant owes him for representing him in various causes. Owing to the fact that the costs relate to different causes, I am unable to make those orders, but the parties are at liberty to consent on the same.



SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

P M NYAUNDI

JUDGE

In the presence of:

Ongoro for Applicant

Mwanzia holding brief for Mutua for Respondent

Kanja Court Assistant

