



REPUBLIC OF KENYA



KENYA LAW
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**KTK Advocates v Daniel Outlets Limited (Miscellaneous Application E166 of 2024)
[2025] KEHC 2425 (KLR) (Commercial and Tax) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E166 OF 2024**

F GIKONYO, J

MARCH 6, 2025

BETWEEN

KTK ADVOCATES ADVOCATE

AND

DANIEL OUTLETS LIMITED CLIENT

RULING

1. The advocate/applicant filed the chamber summons dated 19th November 2024 under Rule 11 (2) of The Advocates (Remuneration) Order, seeking that the taxation ruling of Hon. Maureen Shimenga, delivered on 14th November 2024 be set aside in its entirety and/or vacated and that the advocate/client bill of costs dated 23rd February 2024 be remitted back for taxation before any other Taxing Master other than Hon. Maureen Shimenga.
2. The application is supported by the annexed affidavit sworn by Donald B. Kipkorir, Advocate on 19th November 2024. He deposed that the Taxing Master erred in principle by failing to tax the Bill of Costs dated 23rd February 2024; failing to appreciate the fact that the Bill of Costs was based solely on the arbitration proceedings where the subject value was of Kshs. 1,647,795,365.55 and not on Nairobi High Court Miscellaneous Application No. E140 of 2023.
3. Mr. Kipkorir further deposed that the taxing master erred in law by finding that the letters dated 13th July 2023, 1st August 2023 and 6th September 2023 from the advocate to the client were proof of a legal fees' agreement contrary to the provisions. He relied on Section 45 (1) of the Advocate's Act, which provides that:-

“...and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf”.



4. Mr. Kipkorir further contended that the taxing master didn't consider his affidavit sworn on 24th June 2024 in support of the Bill of Costs wherein the Memorandum of Claim in Arbitral proceedings was annexed and marked as "DBK 2".
5. The application is unopposed.

Analysis and Determination

Issues

6. Are there grounds to set aside the taxation master's ruling?

Threshold

7. The court will not interfere with a taxing officer's decision unless it is shown that there was an error of principle '... to take into account irrelevant factors or to omit to take into account relevant factors...' First American Bank Ltd v Shah & another [2002] 1 EA 64
8. The applicant challenges the taxation ruling on two prongs: -
 1. That there was no agreement for legal fees as per section 45 (1) of the Advocates' Act.
 2. That the bill of costs was based solely on the Arbitration Proceedings where the subject value was Kshs. 1,647,795,365.55 and not on Nairobi High Court Miscellaneous Application No. E140 of 2023.
9. I have read the bill of costs dated 23rd February 2024 from which I note that the basis was the advocate's taking instructions to represent the client in its claim for Kshs. 1,099,992,010.33 against the Ministry of Livestock, Fisheries and Cooperatives in the arbitration matter. The memorandum of claim in arbitral proceedings was annexed and marked as "DBK 2" to advocate's affidavit in support of the bill of costs.
10. In the impugned ruling, the taxing master observed that the applicant filed the bill of costs: -

“...subsequent to a Ruling delivered by Lady Justice Freda Mugambi on the 2nd day of June, 2023 where she dismissed the Respondent's Application dated 24th February 2023 bringing that file to a close.”
11. However, the taxing master relied on letters by the advocate to the client of 13th July 2023, 1st August 2023 and 6th September 2024 and held that: -

“From the above correspondences between counsel and his client, it is evident that there existed a legal fees agreement between the two parties herein.

For the above reason, the advocate client Bill of Costs dated 23rd February 2024 be and is hereby dismissed.”
12. I note that while section 45 (1) of the Advocates' Act provides that an agreement for legal fees ought to be in writing and signed by the client, the Court of Appeal in *Adopt A Light Limited v Ochieng', Onyango, Kibet & Ohaga Advocates* [2016] KECA 387 (KLR) found that there was a legal fee agreement based on a letter from an advocate. It reasoned that the interpretation of the letter was the key consideration, framing the question: - “Did the parties intend to be bound by the terms of the agreement which was in the form of the letter in question?”



13. It then observed that: -

“27.... Section 45(1) of the *Advocates Act* recognizes and regulates agreements on fees between advocates and clients. We note that the section does not provide for the format that such an agreement should take, but only states that such an agreement ought to be in writing and signed by the client or by his/her agent.

28. In considering whether or not it was mandatory or directory for the said agreement to be executed by the appellant, we pay regard to this Court’s decision in *Sony Holdings Ltd v Registrar Of Trade Marks & Another*, [2015] eKLR wherein it was observed:

“Whether the words “shall” or “may” convey a mandatory obligation or are simply permissive, will depend on the context and the intention of the drafters.”

29. Bearing in mind the above mentioned overall objective of the legislature in enacting the *Advocates Act*, we find that intention of the legislature in as far as Section 45(1) is concerned was to ensure that legal agreements on fees were mutually reached between an advocate and client, and that there was no mischief on either side with regard to such agreements. Consequently, we discern from the facts of this case and the conduct of the parties, that there was an agreement on fees as contained in the letter dated 15th July, 2004.

...a representation was made in writing putting the position herein to a conclusive agreement, which is not only binding but enforceable under section 45(1) of *Advocates Act*. Where it is impossible to discern a clear offer or clear acceptance, incapable of precise application, we have to establish whether the parties herein did or did not intend to commit themselves to a binding and enforceable legal relationship.

...”

Applying the test on the letters

14. The foregoing forms the functional foundation for determination of whether the letters herein constituted an agreement for fees under section 45(1) of the *Advocates Act* as was held by the taxing master.

15. In the letter of 13th July 2023, the advocate indicated that: -

“The objective of the suit in the High Court by the Attorney General was to strike out the arbitration and thus end your Claim.”

16. In the letter of 1st August 2023, the advocate wrote that: -

“We urge you to settle our fees in the sum of Kshs. 2,320,000 being fees for our successful representation and in dismissal of Nairobi HC Misc. Application No. E140 of 2023 wherein the Attorney General wanted to terminate the above Arbitration.”



17. From my reading, the subject of the two letters is the High Court proceedings in Nairobi HC Misc. Application No. E140 of 2023 not the arbitral proceedings, the subject of the bill of costs, which is distinguishable.
18. Therefore, the taxing master erred in principle by finding that the letters dated 13th July 2023, 1st August 2023 and 6th September 2023 from the advocate to the client were proof of a legal fees' agreement concerning the arbitral proceedings- the subject of the bill of costs.
19. Thus, a justification for setting aside the taxation ruling dated November 14, 2024. In the upshot, the said ruling is set aside and the advocate/client bill of costs dated February 23, 2024 is remitted back for taxation before any other Taxing Master other than Hon. Maureen Shimenga.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 6TH DAY OF MARCH, 2025.

F. GIKONYO M

JUDGE

In the presence of: -

Donald Kipkorir for the applicant

N/A for respondent

Kinyua C/A

