



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC CIVIL NO. 144 OF 2019**

**EXECUTIVE SUPER RIDES LIMITED.....APPLICANT**

**VERSUS**

**KIBATI & CO. ADVOCATES.....RESPONDENT**

**RULING**

1. This is a Ruling in respect of a reference to this court arising from a ruling of the taxing officer dated 3<sup>rd</sup> September 2019. The Respondent had filed a Client/ Advocate bill of costs which the taxing officer allowed at Kshs.3,285,050/=.

2. The Applicant moved to this court seeking to set aside the taxation on the grounds that the taxing officer had no jurisdiction to tax the bill as there was an agreement in respect of fees which ousted her jurisdiction. The Applicant contends that fees had been agreed at Kshs.600,000/= which fees was paid to the Applicant.

3. The Respondent opposed the reference based on a replying affidavit sworn on 30<sup>th</sup> October 2019. The Respondent contends that there was no agreement in respect of fees as envisaged under section 45 of the Advocates Act which would have ousted the jurisdiction of the taxing officer. The parties agreed to dispose of the reference by way of written submissions. The Applicant filed submissions on 12<sup>th</sup> March 2020. The Respondent filed submissions dated 29<sup>th</sup> September 2020. I have gone through the reference together with the opposition to it by the Respondent. I have also gone through the submissions by the parties herein. The only issue for determination is whether there was an agreement in respect of fee.

4. In the Ruling of the taxing officer dated 3<sup>rd</sup> September 2019 , the taxing officer stated that there was no evidence of any agreement regarding fees which was tabled before her and that is why she proceeded to tax the bill . Section 45 of the Advocates Act provides as follows: -

***“Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—***

***(a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;***

***(b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction fee in respect thereof or his fees for appearing in court or both;***

***(c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate’s fee for the conduct thereof;***

***6. 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”.***

6. The taxing officer aware of the provisions of section 45 of the Advocates Act proceeded to tax bill after making a finding that there was produced by the Applicant. I have seen a fee note from the Respondent dated 21<sup>st</sup> March 2017. This is the fee note which the Applicant argues was the basis the agreed fees. This fee note was prepared by an associate in the Respondents office who had allegedly agreed with one of the directors of the Applicant company. The relevant part of the fee note read as follows:-

**“PURCHASE OF THE PROPERTY L.R. No. 1/445 (Orig No. 1/432/11) NAIROBI (“Property”)**

.....  
To a) Receiving instructions to review and Stamp the Agreement for Sale in respect of the subject property; To draft and register a Transfer of the property; in your favour, to ensuring proper execution and attestation of the same, to ensuring stamp duty is paid and procuring registration and stamping of the Transfer;

Agreed Legal Fees ..... Kshs.500,000

Add: 16% VAT..... Kshs. 80,000

Disbursements:

All inclusive: Stamp Duty, Registration costs, Bank Charges, transport, telephone, binding & photocopy etc; .....  
Kshs. 20,000.000

**TOTAL** **Kshs.600,000.00**

7. The Managing Partner of the Respondent contended that the said fee note was prepared by an associate of the firm who signed on behalf of the firm. The said associate had no authority to do so and that in any case the alleged agreement was not in writing. He stated that as a policy, all fees notes raised by the Respondent ought to have been signed the Managing Partner and the other Advocate raising it. In the instant case, the fee note was only signed by the associate who was not authorized to do so .

8. Other than the fee note indicating that the legal fees had been agreed at Kshs.500,000/= there was nothing in writing to signify any such agreement . Section 45 of the Advocates Act is clear that any agreement on fees must be in writing and signed by the client or his agent duly authorized in that behalf. In the instant case, there was no agreement signed which would have been binding upon the parties. There is not even any correspondence from which an agreement could be inferred. The taxing officer was therefore right in finding that she had jurisdiction to tax the bill there having been no evidence of any agreement in writing. I therefore find no merit in this reference which is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF JUNE 2021.**

**E. O. OBAGA**

**JUDGE**

In the Virtual presence of:-

Mr Ochieng for Applicant

Court Assistant: John

**E. O. OBAGA**

**JUDGE**