



**Javier Georgiadis & Sylvester Law LLP v Moses Kasaine Lenolkulal t/a Oryx Service  
Station (Anti Corruption and Economics Crime Miscellaneous Application E047 of 2024)  
[2025] KEHC 4868 (KLR) (Anti-Corruption and Economic Crimes) (23 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4868 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI CORRUPTION AND ECONOMICS CRIME  
MISCELLANEOUS APPLICATION E047 OF 2024**

**LM NJUGUNA, J**

**APRIL 23, 2025**

**BETWEEN**

**JAVIER GEORGIADIS & SYLVESTER LAW LLP ..... APPLICANT**

**AND**

**MOSES KASAINA LENOLKULAL T/A ORYX SERVICE  
STATION ..... RESPONDENT**

**RULING**

1. The Client/Respondent has approached this court by way of an application dated the 6<sup>th</sup> December, 2024, which is brought under Section 45 of the *Advocates' Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 50 Rule 1 of the *Civil Procedure Rules* seeking the following Orders: -
  1. Spent.
  2. The Advocate- Client Bill of costs dated the 25<sup>th</sup> July, 2024 filed by the Applicant herein, be and is hereby struck out and dismissed.
  3. Costs of the struck out and dismissed Bill be borne by the Applicant.
2. The application is premised on the grounds set out on the face of the same, and it's supported by the annexed affidavit sworn by the Client/ Respondent, on the 6<sup>th</sup> December, 2024.
3. It is the Respondent's case that there exists a fee agreement whose particulars are set out in correspondence dated 8<sup>th</sup>, June 2022 between the Advocate and the Client herein which fixed remuneration for the Advocate in the sum of Ksh.1,100,00.00 on account of legal representation in



HACEC Suit No. 21 of 2019, *Ethics and Anti-Corruption Commission v. Moses Kasaine Lenonkulal t/a Oryx Service Station.*

4. That the Client has paid the Advocate a total sum of Ksh. one million seven hundred and eighty-seven thousand Shillings (1,787,000.00) over and above the agreed remuneration. That as such, the Advocate-Client Bill of costs dated the 25<sup>th</sup> July, 2024 is incompetent and for striking out as the Bill cannot be taxed where there is an agreement on fees between the Client and the Advocate.
5. The Application is opposed by way of two replying affidavits one sworn by Advocate, Javier Georgiadis Majimbo and the other by Nelson Havi on 29<sup>th</sup> January, 2025 and 30<sup>th</sup> January, 2025 respectively.
6. In his affidavit, Georgiadis Majimbo has deponed that the client has deliberately misled the court that there exists a fee agreement whose particulars are set out in the correspondence dated 8<sup>th</sup> June, 2022, whereas, the correct position is that the correspondence was a deposit request note which the client failed to pay even a single cent.
7. That the client never paid him the sum of Ksh. 1,787,000.00 as alleged in the application, and the only payment made to him by the client were attendance fees for purposes of covering fees in Anti-Corruption Case No. 3 of 2019; *Republic v. Moses Kasaine Lenolkulal and 10 others* where he represented the client alongside Nelson Havi Advocate who was recruited as a lead counsel in the case.
8. He averred that all the payments annexed by the client to his supporting affidavit were solely meant to cover instructions fees in the said case, and that Nelson Havi was instructed and paid separately, and therefore, his payment cannot be said to have been his (Georgiadis Majimbo's) fees.
9. That payments directly paid to him are not disputed but it covered fees in the Anti- corruption case where he acted for the client together with Havi Advocate and that the client owes him full fees for representing him in *Milimani ACEC No.21 of 2019.*
10. It is his contention that if their intention with the client was to have a fees agreement, the same would be contained in an agreement or a letter of engagement executed by both parties, but what has been placed before the court was his request for a deposit pending a final fee note.
11. In the affidavit sworn by Mr. Havi, he depones that the client herein called him sometime in the month of September, 2022 and informed him that he had instructed Majimbo Georgiadis of Javier, Georgiadis & Sylvester Law LLP, to take over and represent him in Anti –Corruption case Number 3 of 2019. That the client's request was that Mr. Havi leads Mr. Majimbo Georgiadis as Mr. Havi had the expertise he desired.
12. That he invited the client and the Advocate herein in his office where the issue of his fees was discussed and the client negotiated the fees downwards on the strength of having to pay two lawyers, and at the end of the day, they were able to agree on the fees which the client paid as per the schedule the client has attached to his application. That the said money was solely meant for his fees, and he did not share it with the Advocate herein.
13. The application was disposed of, by way of written submissions and both parties complied with the directions on filing of submissions.

#### **Respondent/Client's Submissions**

14. The client submitted that there exists a Fee Agreement between him and the Advocate herein, the particulars of which are in the correspondence dated the 8<sup>th</sup>, June, 2022 and in respect of *HACEC*



- Suit No. 21 of 2019. That the agreement fixed the fees at Ksh.1,100,000.00 on account of legal representation of the stated case
15. That the terms of the fees agreement therein were dully accepted by the client and he paid all the fees set out in the said agreement and even paid over and above the agreed fees, as exhibited in the annexure marked MK annexed to the affidavit.
  16. The Respondent has further submitted that the Advocate has not controverted the evidence that a total of Ksh. 1,787,00.00 was paid by the client and relied on the case of Wayaffe v Toner Holdings Limited & another (2023) in which the court held that  
“to the extent that the contents of the supporting affidavit have not been challenged or controverted, the honorable court is left with no alternative, but to concede to the averments.”
  17. The Respondent urged the Court to disregard the averments contained in the two replying affidavits as they are contradictory in that, in his replying affidavit, Mr. Havi Advocate depones that the fees the client paid was solely meant to be his fees while on the other hand the Advocate herein, Mr. Georgiadis Majimbo depones that the fees that was paid to him was for a different matter altogether, being Anti-Corruption Case No. 3 Of 2019. That the Advocate has not exhibited any fee Note or fee agreement between himself and the client in respect to Case No. 3 of 2019 to sustain the argument that the fees paid in the sum of Ksh. 1,787,000.00 was for that case. He has urged the court to find that the fees was in respect of case No. 21 of 2019.
  18. It was further submitted that were the Advocate herein permitted to tax the Bill of costs, it would amount to unjust enrichment as his fees has already been paid in full, as per the fees agreement. That, where there is an agreement of fees, the court has no jurisdiction to tax a Bill of costs. Reliance was placed on the case of Limpopo Developers (K) Limited v. Wilfred Ngugi Associates Advocates (2023) eKLR and that of Muriu Mungai & company Advocates v. New Kenya Co-operative Creameries Limited (2020) where in both matters, the court held that it has no jurisdiction to tax a Bill of Costs where there is an agreement of fees between a client and an Advocate.
  19. On the part of the Applicant/Advocate, it was submitted that there is no, and has never been a retainer agreement for payment of legal fees between the Advocate and the Client herein as alleged by the client in his supporting affidavit in relation to legal representation in HACEC 21 of 2019. That the client’s allegation of an existing agreement is based on a deposit request Note number 03.06.2022 annexed to the client’s supporting affidavit and it relates to HACEC 21 of 2019, which deposit was never paid.
  20. That, it is not true that the Advocate agreed to have been paid Ksh. 1,787,000.00 as alleged in Case 21 of 2019 but what he was paid were court attendances for Case No. 3 of 2019 where the Advocate represented the client alongside Mr. Havi Advocate. Further, that the payments for fees were made to Mr. Havi alone and it did not constitute payment to him. That, there is no confusion as to who the payments in the schedule annexed to the supporting affidavit were made to, and that the two Advocates have explained the purpose of the said payments, and urged the court to decline the invitation to be misled.
  21. On the fees agreement, it was submitted that the client has not produced any proper retainer agreement duly executed by both parties in order for him to be protected under Section 45 of the Advocates’ Act. Reliance was placed on the case of Omulele & Tollo Advocates v. Mount Holdings Limited (2016) KECA 523 (KLR) and that of Lubulellah & Associates v. Gilbi Construction Company Limited (2024) KEELC 4243 (KLR) on what constitutes a retainer agreement.



## Analysis and Determination

22. From the foregoing, the only issue for determination is: -Whether the Advocate's Bill of costs dated the 25<sup>th</sup> July, 2024 should be struck out.

23. The client has moved the court mainly under the provisions of Section 45 of the [Advocates Act](#) which provides: -

“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, 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”

24. Section 45(6) provides as follows;

“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.”

25. As per above Section of the law, such an agreement will only be binding if it is in writing and signed by the client or his agent. See the case of [Ali Mohammed Egal v. Maina Onsare Partners Advocates](#) (2021) eKLR and that of [Abmednasir Abdikadir & Co. Advocates v. National Bank of Kenya](#) (2006) 1EA5; (2007) eKLR which upheld this position.

26. In the matter herein, the client has annexed a document dated 8<sup>th</sup>, June, 2022 from the Advocate herein, the subject being;

Deposit request note number 03.06.202, towards the Advocate's legal fees and disbursements, in connection with instructions to represent the client at the High court in Civil Suit No. 21 of 2019. [Ethics & Anti-Corruption Commission v. Moses Kasaine Lenolkulal t/a Oryx Service Station](#). The instruction fees is Ksh 1,000,000.000, disbursements of Ksh.100, 000 making a total of Ksh 1,100,000 but this did not include attendance fees. The deposit request was clear that it was part fees payment and not all the fees payment. Further, the same is signed by the Advocate but the client has not signed as per the provisions of Section 45 (1) of the [Advocates' Act](#).

27. The court in the case of [Ali Mohammed Egal v. Maina & Onsare Partners Advocates](#) (2021) eKLR held that: -

“An agreement for fees must not only be in writing, it must be signed by the client or by his authorized agent.”



28. similarly, the court in the case of *Nzaku & Nzaku Advocates v. Tabitha Waithera Mararo as Trustee of TNK (a minor) & others* (2020) eKLR held:-

“An agreement for fees contemplated under section 45, is a contract whose terms and conditions must be clear and unambiguous. There must be consensus or meeting of the minds between the parties and it must also be entered into freely without undue influence or promise.”

29. From the foregoing, it is clear to this court that there was no fees Agreement between the Advocate and the client as alleged by the client.

30. The application is therefore found without merit and is hereby dismissed with costs.

31. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 23<sup>RD</sup> DAY OF APRIL 2025.**

**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Miss Nakhana holding brief for Mr. Shisanya for the Applicant

Mr. Isaac Rene for the Client/Respondent

Court Assistant – Aden

