



**KTK Advocates v Forest Lodge Limited (Miscellaneous Cause E880 of 2023)
[2025] KEHC 4693 (KLR) (Commercial and Tax) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE E880 OF 2023**

PM MULWA, J

APRIL 10, 2025

BETWEEN

KTK ADVOCATES ADVOCATE

AND

FOREST LODGE LIMITED CLIENT

RULING

1. This ruling determines two applications: the application dated 23rd April 2024 filed by Forest Lodge Limited (the Client), herein referred to as the first application, and the Notice of Motion dated 3rd June 2024 filed by KTK Advocates (the Advocates), herein referred to as the second application.
2. A brief background is that the client had instructed the advocate to institute a suit against Credit Bank to recover a sum of Kshs. 249,074,300.00. A dispute arose, and the advocate filed its bill of costs dated 11th October 2023, which was taxed on 9th April 2024 at Kshs 3,770,914.50 and a certificate of taxation dated 28th May 2024 was issued.

The first application

3. The first application brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* Rule 11(1) and (2) of the Advocates Remuneration Order, seeks to stay the execution and set aside the ruling dated 9th April 2024. It also seeks that the bill of costs be submitted back for re-taxation.
4. The core ground in support of the first application is that the amount taxed is manifestly high and unjustly excessive considering the amount of work put in by the advocate. Additionally, the applicant argues that the taxing officer erred in principle by treating the amount as a debt collection under paragraph 7 of Schedule 5 of the Advocates Remuneration Order, as the legal fee ought to be reduced by half. That the advocate failed to represent the client in breach of a contract.



5. The advocate objected to the application and filed grounds of opposition dated 5th May 2024, stating that the reference is fatally defective and ripe for striking out as it is premised on the Civil Procedure Rules, and that the applicant has failed to comply with the mandatory provisions of Rule 11 of the Advocates Remuneration Order. The reference fails to establish the principles of taxation violated by the taxing officer and the amount taxed cannot be said to be inordinately high. It is averred that the reference is an abuse of the court process as the client is unwilling to pay the legal fees. That the taxing master has exclusive jurisdiction, and the discretion is unfettered, and the client's ignorance of the law is not a reason to impugn the ruling of the taxing master.

The second application

6. The second application is expressed under Section 51(2) of the *Advocates Act* and Rule 7 of the Advocates Remuneration Order. It seeks to enter judgment against the client/respondent in the sum of Kshs. 3,770,914.50 plus interest at 14% p.a. from 30th November 2023 until payment in full, costs of the application and all other incidental costs to be provided for.
7. The application is based on the grounds that the Advocate was instructed to represent the client against the Credit Bank to recover a sum of kshs 249,074,300.00. The relationship turned sour, and the advocate filed a bill of costs on 11th October 2023, which was taxed at Kshs 3,77,914.50 which is commensurate to the legal services provided by the Advocate.
8. The client did not file a reply to the Advocate application.
9. The parties did not file written submissions in compliance with the court directions of 25th July 2024.
10. I have considered the issues raised in the two applications before me, the grounds in support thereof and in opposition and the following issues stand out for determination:
 - a. Whether the taxation process was flawed or unjustified.
 - b. Whether the advocate is entitled to judgment on the taxed costs, including interest
11. The client argues that the taxed amount is excessively high and unjust, considering the work done by the advocate. The taxing officer wrongly categorized the legal fee under Paragraph 7 of Schedule 5 of the Advocates Remuneration Order, which the client believes should be reduced by half. The advocate allegedly breached the contract by failing to represent the client. On the other hand, the Advocate argues that the reference is in violation of the provisions of Rule 11 of the Advocates Remuneration Order, which provides for the procedure for challenging taxation.
12. The assessment of legal fees by a taxing officer is guided by the Advocates' Remuneration Order. The burden lies on the client to demonstrate that the taxing officer misapplied the law, and it warrants setting aside. It is trite law that Courts will only interfere with taxation if there is a demonstrable error in principle or an excessively high and unjustified fee. The mere dissatisfaction with the amount is not sufficient ground to set aside (see *Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Others* [1972] EA 162).
13. The principles of varying or setting aside a taxing master's decision are well set out in the cases of *First American Bank of Kenya v Shah and Others* (2002) EA 64 and *Joreth Ltd v Kigano and Associates* (2002) 1 EA 92, where it was held that the taxing master's judicial discretion can only be interfered with when it is established that there was an error of principle, that the fee awarded is manifestly excessive for such an inference to arise, and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law.



14. The Court of Appeal in *Joreth Ltd v Kigano & Associates* (supra), held that a taxing master in assessing costs to be paid to an advocate in a bill of costs was exercising her judicial discretion, and that such judicial discretion can only be interfered with when it is established that the discretion was exercised capriciously and in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the taxing master is excessive to amount to an error in principle.
15. Schedule 5, paragraph 7 of the Advocates Remuneration Order 2014 deals with debt collection and recovery of liquidated sums. The applicant disputes the taxing officer's classification of the matter as debt recovery, arguing that the nature of the claim was not merely a straightforward debt collection but rather a broader claim for compensation arising from losses incurred due to a failed land transaction. I am of the view that a liquidated demand (debt) is a definite and ascertainable sum due under a contract or obligation, whereas damages (compensation for loss) may require assessment and proof.
16. Upon consideration of the pleadings filed, it is evident that the client expressly instructed the Advocate to recover a sum of Kshs 249,074,300.00 being compensation for loss and damage arising from the purchase of land, legal fees incurred in the transfer, borehole installation costs, fencing, architectural fees, construction expenses, as well as the loss of opportunity to complete the intended project. The amount claimed was ascertainable from the documents furnished by the Advocate, particularly at page 120 of the record. I am therefore persuaded that the taxing master properly exercised discretion in taxing the Advocate's bill under the category of debt collection. In my view, the client has not demonstrated any error in principle on the part of the taxing master to warrant interference with the decision.
17. It is trite law that an Advocate is entitled to fair remuneration for work lawfully undertaken on behalf of a client. Dissatisfaction with the Advocate's representation, without more, does not amount to misconduct or a breach that would justify the reduction of fees. The record reflects that the Advocate issued a formal demand letter and had commenced representation of the client until the professional relationship deteriorated. I accordingly find that the client's dissatisfaction does not, in itself, justify the reduction of the fees due to the Advocate.
18. The advocate argues that the instant application violates the provision of Rule 11 of the Advocates Remuneration Order.

Rule 11 which provides as follows:

1. Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation 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 the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
5. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an



order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

19. Rule 11 of the applicable rules is couched in mandatory terms, stipulating that the aggrieved party must issue a notice within 14 days specifying the items objected to, and the taxing officer is required to provide reasons for the decision. Upon receipt of the reasons, the objector is obligated to file an application with the High Court within 14 days, setting out the grounds for objection. In the present case, the impugned ruling was delivered on 9th April 2024, and the reference was filed on 23rd April 2024. That was within the statutory 14-day period.
20. In light of the foregoing, I find that the application dated 23rd April 2024 is devoid of merit and, accordingly, the same is hereby dismissed.

On whether the advocate is entitled to judgment on the taxed costs, including interest

21. The applicant's present application is predicated under Section 51(2) of the Advocates Act, which provides as follows:

“The certificate of the taxing officer by whom any bills has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount 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.”

22. A court may not enter judgment on a certificate of costs where the judgment has been set aside, varied and/or altered or the retainer is disputed (See Republic v City Council of Nairobi, Ivyland Park Ltd (interested party) Ex-parte Inderpal Singh & 2 others (2021) eKLR).
23. I have carefully considered the reference filed on 23rd April 2024 by the client and, upon due consideration, find that it lacks merit. Accordingly, the reference is dismissed. The decision of the taxing master stands unchallenged and has not been set aside. Additionally, a certificate of taxation was duly issued on 28th May 2024.
24. Regarding the issue of interest, it has not been demonstrated that the Advocate raised the matter of interest in the bill of costs dated 11th October 2023. Consequently, the Advocate is only entitled to interest from the date of filing the current application.

Disposition

25. I make the following final orders:
 - a. The Notice of Motion dated 3rd June 2024 succeeds and is allowed in the following terms
 - i. Judgment be and is hereby entered against the Respondent/Client in favour of the Applicant/Advocate for the sum of Kshs. 3,770,914.50 as per the Certificate of Taxation issued on 28th May 2024.
 - ii. Interest at court rates from 3rd June 2024, which is the date the application was filed, until payment in full.
 - b. The application dated 23rd April 2024 by the Respondent/Client is disallowed with no orders as to costs.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Donald Kipkorirfor Advocate

Ms. Muronji h/b for Mr. Jumafor Client/respondent

Court Assistant: Kadzo

