



**Oteino & Amisi Advocates v Geoflex Consultants Limited (Commercial Case E255 of 2024) [2025] KEHC 4825 (KLR) (Commercial and Tax) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4825 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E255 OF 2024  
JWW MONG'ARE, J  
APRIL 8, 2025  
IN THE MATTER OF THE ADVOCATES ACT- CAP 14 LAWS OF KENYA  
AND  
IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT**

**BETWEEN  
OTEINO & AMISI ADVOCATES ..... ADVOCATE  
AND  
GEOFLEX CONSULTANTS LIMITED ..... CLIENT**

**RULING**

1. What is before this court is a Notice of Motion application filed by the Client/Applicant on 8<sup>th</sup> November 2024 and it seeks ostensibly to have this matter transferred to the High Court at Kajiado and have the Notice of Taxation filed before the Commercial Division considered by the said court.
2. The Applicant argues that the property subject matter of the Advocate-client bill of costs is within Kajiado County and the suit from whence the bill emanates being E127 of 2024 was heard and determined by the High Court in Kajiado and therefore the Advocate in filing the Bill for Taxation by the Commercial Division in Milimani High Court is not only being mischievous but is intended to deny the client an opportunity to defend the same.
3. The Applicant further argues that this court lacks the requisite jurisdiction to entertain the suit as filed and urges the court to set aside the default judgment by the taxing master entered herein on 31<sup>st</sup> July 2024 as the same was done without the Client being accorded an opportunity to defend the suit as it was never served with any court documents.



4. It is the Defendant's case that the said judgment sum of Kshs.1,998,991.70/= is a huge sum of money that if left unchallenged will greatly prejudice the Client as it was never given an opportunity to defend itself and has never even been invoiced for the sum claimed by the advocates before the suit was filed to give it an opportunity to discuss the amount. The Client argues that it is their position that the Advocates deliberately opted not to notify them of the Notice of Taxation or entry of judgment in order to deny them an opportunity to challenge the same and the said failure to serve them was not only intentional but tainted with malice and deliberate on the part of the advocates.
5. In response and opposition to the application the Advocates/Respondents have filed several documents. A replying affidavit sworn on 18<sup>th</sup> December 2024 by BENARD OTIENO, the Managing Partner of the Advocate/Respondent. A notice of Preliminary Objection filed on 18<sup>th</sup> December 2024 and grounds of opposition filed on 2<sup>nd</sup> December 2024.
6. The Advocate/Respondent takes issue with the late filing of the application which he argues that the same has been filed outside the parameters set for filing a reference under the Advocates Remuneration order paragraph 5 and the same having been brought without leave of the court, cannot therefore be entertained by the court. The Advocate further reiterates that indeed the Client/Applicant was made aware of the proceedings in this matter that resulted in the impugned ruling and judgment that this application seeks to set aside. That there was service of both the Notice of Taxation and the application for entry of judgment after taxation but the client ignored and or neglected to participate in the said proceedings. In addition, the Advocate reiterates that the services for which the Bill of Costs was filed was in relation to work undertaken by the client as a consultant and had nothing to do with the geographical location of the lands that were surveyed. Indeed, the Advocates reiterates that the instructions to represent the client were issued in Nairobi where both the Advocate and the Client operated from and that the issues relating to the cases in Kajiado are distinct and separate. The Advocate urges this court to find it has jurisdiction to entertain both the taxation and the application for entry of judgment upon taxation.

### **Analysis and Determination**

7. Upon careful consideration of the application and the supporting affidavit and the response filed by the Advocate and the rival submissions, I note that the only issue that this court is called upon to determine is whether the application as filed has merit.
8. From the pleadings filed, I note that the present application arises from a taxation of an Advocate - Client Bill of Costs in which a ruling of the taxing master was delivered on 31<sup>st</sup> July 2024. Subsequently, a Certificate of Costs was issued on 13<sup>th</sup> August 2024. I note that the Applicant argues that this court is bereft of jurisdiction ab initio to have considered the said bill as the lands subject matter of the bill are located in Kajiado County and argues that these proceedings should have been commenced in the High Court at Kajiado.
9. Paragraph 11 of the [Advocates Remuneration Order](#) provides as follows:-
  11.
    - (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 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 for sub paragraph (1) or subparagraph (2) for 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.
10. A perusal of the record reveals that the present application was filed on 8<sup>th</sup> November 2024 while the ruling on the taxation was delivered on 31<sup>st</sup> July 2024 and a Certificate of Taxation issued on 13<sup>th</sup> August 2024. It is therefore clear from the proceedings that the present application cannot be deemed as a reference the same having been filed three months after the taxation process was completed and without leave of the court. I find merit in the Preliminary Objection raised by the Advocate on this point.
11. The second ground is whether the application meets the tenets of a reference as envisioned by Paragraph 11 above. In *First American Bank Ltd Vs Shab & Another* (2002) eKLR cited by the Applicant, the Court observed as follows; "This court cannot interfere with the taxing officer's decision unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an interference that it was based on an error of principle.....it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors."
12. The application as filed does not seek to challenge the taxation. It only raises issues as to the geographical location of the court that taxed the Bill. I therefore agree with the arguments put forward by the Advocate that this court cannot treat the same as a reference as envisioned by the *Advocates Remuneration Act*.
13. On jurisdiction, I note that the challenge by the Applicant is that the matter ought to have been commenced from the High Court in Kajiado and not Milimani, in Nairobi. The Applicant argues that the land subject matter for which the services of the Advocates were retained is located in Kajiado. The Advocate argues that indeed the Client instructions related to its work as a Surveyor and had nothing to do with land. Be that as it may, Article 165 (3) (a) provides that the High Court shall have
- (1) There is established the High Court, which —
  - (3) Subject to clause (5), the High Court shall have —
    - (a) unlimited original jurisdiction in criminal and civil matters.
14. It therefore matters not, in my view, if a matter that is meant to be determined by the High Court is commenced in Kajiado or Nairobi, as the *Constitution* of Kenya has clothed the High Court with power to determine Criminal and Civil Matter commenced within it without a limit to jurisdiction on geographical boundaries. I find therefore that this argument cannot be sustained.
15. Having looked at the affidavit of service filed by the Advocate. I am persuaded that the Client had notice of the Bill of Costs filed with the taxing master but neglected to defend the same and or refused to participate in the process. Overall, I find no merit in the Application by the client seeking to transfer the Bill of Costs for taxation to Kajiado High Court and I am not persuaded that the matter should



start de novo and at the claim stage. The application filed by the client dated 8<sup>th</sup> November 2024 is hereby dismissed with costs to the Advocate. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL 2025**

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**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of

1. Mr. Bernard Otieno for the Advocate/Respondent.
2. N/A for the Client/Applicant.
3. Amos - Court Assistant

