



C Kungu & Company Associates Advocates v Mungania (Miscellaneous Civil Application E023 of 2023) [2025] KEHC 5970 (KLR) (2 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E023 OF 2023**

HM NYAGA, J

MAY 2, 2025

BETWEEN

C KUNGU & COMPANY ASSOCIATES ADVOCATES APPLICANT

AND

ROBERT M'IMPWI MUNGANIA RESPONDENT

RULING

1. The application before me is the Notice of Motion dated 9th April, 2024 which seeks the following orders:-
 1. That the honourable Judge be pleased to review the decision of the taxing officer rendered vide her ruling dated 15th March 2024 in respect of items No 1, 2, 3, 4, 5, 13, 14, 16, 19, 22, 23, 24, 27, 28, 29, 32, 33, 38, 41, 43, 44, 46, 51, 52, 54, 55, 61, 63, 67, 70, 72, 74, 75, 76, and 78 of the Advocate – Client Bill of costs dated 5th April, 2023 filed in court on 12th April, 2023.
 2. That the honourable Judge be pleased to give appropriate directions regarding the taxation of the Advocate – Client Bill of Costs dated 5th April, 2023 in respect of the items objected to by the applicant.
 3. That the costs of this application be provided for.
2. The application which is a reference to the Judge under Rule 1(2) of the Advocates (Remuneration) order is premised on the following grounds
 1. The taxing officer misconstrued the subject matter of the taxation which arose from legal services rendered by the Applicant to the Respondent in Meru High Court Civil Appeal No 11 of 2024 which was the basis of the Advocate- Client Bill of Costs dated 5th April, 2023 and the Taxing Officer consequently erred in basing the taxation of items 1 in respect of the Instruction fees on the amount of Kshs 192,000/= awarded as loss of income in the subordinate court



in Maua Chief Magistrate's Court Civil Case No 100 of 2007 as though she was taxing the advocate's costs in the subordinate court matter which error also affected the amount awarded by the taxing officer in respect of item 2 as fees for getting up for trial.

2. The Advocate-Client Bill of costs dated 5th April, 2023 arose from legal services rendered by the applicant to the Respondent in Meru High Court Civil Appeal No 11 of 2014 between Gediel Mugambi M'imaria & 2 Others v Robert M'impwi Mungania as is clearly evident on the face of the Advocate – Client Bill of Costs dated 5th April, 2023.
 3. The Advocates Bill of Costs dated 5th April, 2023 was NOT in respect of the Advocate's costs of fees in Maua Chief Magistrate's Court Civil Case No 100 of 2007 which had already been settled after the assessment of the party and party costs by the trial court and were not raised by the advocate in the Advocate-Client Bill of costs dated 5th April, 2023.
 4. The applicant M/s C. K Ungu & Company Associates represented and rendered legal services to the respondent Robert M'impwi Mungania in both the subordinate court in Maua Chief Magistrate's Court Civil Case No 100 of 2007 and in the High Court at Meru in Meru High Court Civil Appeal No 11 of 2014 which are two distinct and separate matters which involved distinct and separate legal proceedings in different courts of different jurisdiction.
 5. The taxing officer seems to have got mired in respondent's arguments and submissions relating to extraneous matters and lacked objectivity in her decision.
 6. The applicant attached the supporting receipts and/or invoices in respect of disbursements.
 7. The items referred to in item 5, 13, 14, 16, 19, 22, 23, 24, 27, 29, 32, 33, 51, 52, 54, 55, 61, 67, 70, 72, and 75 which were taxed off for want of evidence in support are self-evident from the court record where the documents referred to were duly filed and received at the court registry whereas item 43 in respect of perusal of the Record of Appeal filed on 17th January, 2018 is clearly provided for under paragraphs 8(a) of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014.
 8. The Error by the Taxing Officer in respect of instruction fees under item 1 led to a further error in taxation of item 78 of the Advocate-Client Bill of Costs dated 5th April, 2023 which she mistakenly taxed as per schedule 7(B) on instruction fees whereas the applicable schedule is Schedule 6(B) of the Advocates (Remuneration) (Amendment) Order, 2014.
3. In response, the respondent filed a replying affidavit sworn on 17th September, 2024. In a nutshell, the respondent avers that the ruling by the Tax Master was proper.
 4. The respondent avers that he had been ordered to deposit Kshs 350,000 in court as security and upon the court issuing of the appeal, the applicant paid Kshs 250,000/= to him and retained Kshs 100,000/=, despite the fact that he had paid his fees in full. The respondent questioned why the applicant did not exercise leu over the amount and held if she was really indebted in fees. That after the taxation of costs, he deposited the balance of the costs of Kshs 81,500/= into the applicants account.
 5. The respondent further avers, that the applicant has not demonstrated any error in principle by the taxing master to warrant the order sought.

Analysis and determination.

6. Having considered the application and the response thereto, I find the issues for determination are:-
 - a. Whether this court should interfere with the discretion of the taxing Master.



- b. Whether the interest set out by the applicant should be re-assessed.
 - c. Who bears the costs of their reference.
7. The principles applicable in a matter like this were clearly set out in *Peter Mutboka and another v Ochieng & 3 others* [2019] eKLR, where it was held that:-
- XXXX
8. Similarly in *Republic v Minister for Agriculture and 2 others, Ex-parte Samuel Muchiri Njuguna* [2006] eKLR, the court held that:-
- “The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated apart, of course, from the need to show if such works have not already been provided for under a different head of costs.”
9. With the above principles on mind, I have considered the Bill of Costs. I find as follows:-
- a. Item 1 – I find that the same was assessed to scale
 - b. Item 2 – Under paragraph 3. I find it to be 1/3 of items 1 and was assessed to scale.
 - c. Item 3 and 4 were taxed correctly.
 - d. Items – 5, 13, 14, 16, 19, 22, 23, 24, 27, 29, 32, 33, 36, 43, 47, 51, 52, 54, 55, 61, 70, 72, 75 were correctly taxed off, since no supporting evidence was presented before the Deputy Registrar.
10. As for the rest of the items, I am of the view that the Deputy Registrar had discretion. This court cannot set aside that order even if the court would have reached a higher figure.
11. In conclusion, I find that this reference is lacking merit and it is dismissed with no orders as to costs.

DATED, SIGNED & DELIVERED AT MERU THIS 2ND DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

