Nzaku t/a Nzaku & Nzaku Advocates v Mboroki (Judicial Review Miscellaneous Application E069 of 2024) [2025] KEHC 8945 (KLR) (Judicial Review) (23 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8945 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW MISCELLANEOUS APPLICATION E069 OF 2024

RE ABURILI, J

JUNE 23, 2025

IN THE MATTER OF AN APPLICATION SEEKING AN ORDER OF JUDICIAL REVIEW BY LOCAL AUTHORITIES PENSION TRUST (LAPTRUST)

IN THE MATTER OF THE RETIREMENT BENEFITS ACT, NO. 3 OF 1997

BETWEEN

STEVEN NZAKU T/A NZAKU & NZAKU ADVOCATES ..... APPLICANT

AND

STEPHEN MUTEITHIA MBOROKI ..... RESPONDENT

RULING

1. The Applicant filed an Advocate-Client Bill of Costs for taxation dated 26th February 2024 and the ruling on the same was delivered on 16th May 2024 by the Taxing Master.

2. Aggrieved by the Taxing Master's ruling, the Applicant filed a Chamber Summons application dated 29th May 2024 which is the subject of this ruling.

3. The application seeks for review and setting aside the said decision and in its place, this court to allow the Advocates Bill of costs or in the alternative, an order setting aside the ruling and referring the Bill of Costs back for fresh taxation by a different Taxing Master/Officer.

4. The Chamber Summons application is supported by the affidavit of Steven Nzaku advocate sworn on 29th May 2024.

5. It is deposed that his firm replaced the firm of Muema & Associates Advocates who were previously acting for the Respondent and this change was effected by consent between both counsel as evidenced by the consent to change advocates dated 9th November 2020.

6. Mr. Nzaku deposes that sometime in 2022, he filed an Advocate-Client Bill of Costs in the initial judicial review file (JR No.403 of 2012) which he later withdrew after realising that the same had been wrongly filed in the same court file instead of a miscellaneous application.

7. That around the same time, the new advocates for the Respondent, Gikeria Vadgama & Associates Advocates also engaged him regarding a possible settlement of costs in the matters in which he had represented the Respondent.

8. That the matters were Retirement Benefits Appeals Tribunal (RBAT) No.5 of 2020-Stephen Mboroki Mutethia vs. RBA & Another, Nairobi HC Misc. Application No.403 of 2012(Taxation) and HC Misc. Application No.E001 of 2021 (Taxation).

   That upon several correspondences and emails, counsel agreed that RBAT No.5 and HC Misc. Application No.E100 of 2021 would be withdrawn after payment of the sum of Kshs.150,000.00 which was done. According to Mr. Nzaku, it was also agreed that his firm was at liberty to file a Party & Party Bill of Costs and that the firm would keep the proceeds thereof in lieu of having to file an Advocate-Client Bill of Costs. It is the advocate's case that this is evidenced by an email dated 11th May 2021 attaching an amended draft professional undertaking. The email is said to have been in response to an email sent by the firm of Gikeria & Vadgama on 10th May 2021.

9. In line with the said agreement, it is his case that he filed and had taxed a Party and Party bill of costs which was taxed at Kshs.663,591.33/= and Local Authorities Pension Trust who was the Respondent in the Party & Party Bill of Costs proceeded to issue a cheque in the names of the client rather than in the name of the advocate's firm.

10. It is Mr. Nzaku's case that as requests to have the cheque changed in the name of the firm were not heeded, he filed an application seeking to compel that the cheque be issued in the name of the firm but this application was dismissed. However, the court also directed that the firm was at liberty to file and tax an Advocate-Client Bill of Costs.

11. He states that he proceeded to file the Advocate-Client bill of costs but in a ruling delivered on 16th May 2024, the Taxing Master erroneously concluded that there was a legal fee agreement between the advocate and the client and therefore she had no jurisdiction to tax the bill. Mr. Nzaku contends that the client did not attach any signed legal fee agreement nor correspondences capable of giving rise to what may have legally been construed as a legal fee agreement.

12. It is also his case that the taxing officer ignored the explanation on why the Bill of Costs was withdrawn yet went ahead to erroneously rely on the fact that the withdrawal was evidence that there was a legal fee agreement between the parties.

13. The Applicant's further case is that the taxing officer misconstrued the applicable legal principles in the instant case thereby reaching an erroneous and oppressive decision.

14. The Applicant also filed written submissions dated 11th October 2024 in which it is submitted that section 45 of the *Advocates Act* provides that an advocate and the client can enter into an agreement fixing the amount of the advocate's fee for the conduct of any matter in which the advocate is to act for the client. However, that a proviso to the section makes it clear that such an agreement has to be in writing and signed by the client or an authorized agent.

15. It is submitted that for such an agreement to amount to a contract between the parties, the same has to meet the ordinary requirements of a contract as envisaged under the law of contract. The Applicant relies on the case of Nzaku & Nzaku Advocates v Tabitha Waithera Mararo as Trustee of Tracy Naserian Kaaka (minor) & others [2020] eKLR where the Taxing Officer reiterated this position.

16. The Applicant's submission is that the correspondences relied on by the Taxing Officer in the instant case did not amount to a valid legal fees agreement between the parties. It is submitted that at pages 9 and 10 of the taxing officer's ruling, she relied on the letters dated 4th May 2021 and 3rd May 2021 which letters did not contain any communication or feedback from the Applicant regarding the issues raised. It is submitted that the letters consist of one-sided proposals only as there is no unequivocal evidence that this proposal was ever accepted by the Applicant in the terms proposed especially with regard to taxation of costs in JR No.403 of 2012.

17. The Applicant's argument is that although the taxing officer alluded to a tele conversation between the parties, no evidence of the same was adduced before her. It is also submitted that if at all the Respondent's proposal had been accepted and there was consensus between the parties as to the terms of the alleged legal fees agreement, nothing would have prevented the parties from filing a duly signed consent between them and/or their advocates for adoption in respect of the previously filed Advocates Client Bill of costs which the Applicant submitted was withdrawn after discovering that the same had been filed in the wrong file.

18. The Applicant places reliance on the case of Vincent M. Kimwele v Diamond Shield International Limited [2018] eKLR where the court held that as there was no meeting of the minds of the parties there was no contract.

19. The Applicant submits that the taxing officer ought to have considered this explanation instead of turning a blind eye to the same thereby ending up with an erroneous decision. It is argued that the lack of consensus is further evident from the letters dated 4th May 2021 and 10th May 2021 which proves that the negotiations were still ongoing as at the time the Notice of Withdrawal dated 3rd May 2021 was filed and as such, it is illogical to argue that the same was withdrawn before any agreement could be reached on the same.

20. According to the Applicant, contrary to the Respondent's averments, the Bill of Costs filed in Nairobi Misc. Application No.E001 of 2021 and HC Judicial Review No.403 of 2012 were in respect of two different matters. Further, that the Bill of Costs in Misc. Application No.E001 of 2021 had been properly filed.

21. The Applicant also submits that the decision of the taxing officer was not just and that the decision was one made in disregard of the learned judge's decision in the ruling of 15th January 2023.

22. On costs the Applicant submits that the same are at the discretion of the court and that it is trite that costs should follow the event unless the court for good cause decides otherwise.

23. The Respondent filed a Replying Affidavit sworn on 12th July 2024 by Stephen Mboroki Mutethia.

24. Opposing the reference, Mr. Mboroki deposes that there was no Advocate-Client relationship between him and the Applicant in Judicial Review Application No.403 of 2012. That while he initially engaged the Applicant to represent him in Nai RBAT Civil Appeal No.5 of 2010, their engagement terminated upon delivery of the Tribunal's ruling on 19th October 2012.

25. He deposes that upon delivery of the Tribunal's ruling, the Local Authorities Pension Trust filed JR No.403 of 2012 seeking an order of certiorari to quash the decision of the Tribunal and judgment was delivered 5th July 2013 dismissing the application with costs to him.

26. Mr. Mboroki's further deposition is that to his surprise, the Applicant purported, through a consent, to take over the matter after judgment on his behalf from his previous advocates, the firm of Muema & Associates Advocates. That the Applicant proceeded to file an Advocate-Client Bill of Costs without

his instructions and as such, he instructed the firm of Gikera & Vadgama Advocates to enter appearance and object to the same. A notice of appointment dated 19th January 2021 together with a preliminary objection were filed by the said firm.

It is his case that he instructed the firm of Gikera & Vadgama Advocates to engage in negotiations in order to resolve the issue of representation and subsequently, a professional undertaking dated 4th May 2021 was drafted. The Respondent states that pursuant to the undertaking, it was agreed that the firm of Gikera & Vadgama Advocates would take over the Tribunal matter as his advocates and that he would make an all-inclusive payment of Kshs.150,000 as settlement fees for all professional services rendered by the Applicant; and that the Applicant would in turn withdraw the Advocate-Client Bill against the Respondent. In JR NO.403 of 2012 and mark HC. Misc. Application No.E001 of 2021 as settled.

27. The Respondent in his affidavit deposes that both bills in JR No.403 of 2012 and HC. Misc. Application No.E001 of 2021 were withdrawn pursuant to the terms of the signed undertaking. He states that he made the said payment and the Applicant withdrew the bills. It is urged that no separate agreement allowing Mr. Nzaku to file a Party-Party Bill of Costs was entered into.

28. Mr. Mboroki deposes that the Applicant has continued to deliberately withhold the cheque issued in the respondent's name preventing him from requesting a countermand from LAPTRUST and as a result, he has never benefited from the award of costs.

29. The Respondent also filed written submissions dated 12th November 2024. He argues that the present application is incompetent as the Applicant has failed to follow the laid down procedure for objection to a decision on Taxation as is clearly set out under Paragraph 11 of the Advocate's Remuneration Order 2014. He relied on the cases of Aoro v Were [2022] KEHC 14628 (KLR) and in Machira & Co Advocates v Magugu [2002] eKLR where the court is said to have emphasized that any grievance arising from a taxation ruling must be addressed exclusively through the procedure set out in Paragraph 11 of the Advocates Remuneration Order.

30. The Respondent submits that the Applicant failed to submit a notice to the Taxing Officer within the required 14 days period specifying the items of taxation they are disputing. Further, that the Applicant did not attach the reasons provided by the Taxing Officer for the taxation.

31. It is submitted that the Taxing Officer correctly determined that there was a valid agreement and also correctly noted that consequently, under Section 45(6) of the Advocate Act, she was barred from proceeding to tax the bill of costs.

32. The Respondent relies on the case of Mereka & Company Advocates v. Zakhem Construction [2014] KEHC 1257 (KLR) eKLR where the court is said to have reaffirmed that retainer agreements may be inferred from the conduct of the parties. That the Applicant's actions were initiated following the Respondent's letter dated 26th April 2021 which satisfied the essential elements of a contract: an offer, acceptance and consideration as evidenced by the payment of Kshs.150,000 and the subsequent withdrawal/settlement of the proceedings.

33. Relying on the case of Majanja Luseno & Company Advocates v Leo Investments Limited & Madatali Saburali Chatur [2017] KEHC 9857 (KLR) the Respondent urges the court to find that there was binding Remuneration Agreement between the parties and that the advocate committed himself to not file any applications for the taxation of Advocate/ Client costs.

Analysis and Determination

34. I have considered the application, the affidavits, and the parties 'submissions. The main issues arising for determination are:

    a. Whether the application is competently before this Court in light of the procedure under Paragraph 11 of the Advocates Remuneration Order;

    b. Whether the taxing officer erred in law in finding that there existed a legal fees agreement and consequently declining to tax the Bill of Costs.

Whether the application is competently before this Court in light of the procedure under Paragraph 11 of the Advocates Remuneration Order;

35. Before turning to the merits, let me first address the procedural objection raised by the Respondent, who argues that the present reference is incompetent for failure to comply with Paragraph 11 of the Advocates Remuneration Order. It is correct that the procedure requires an aggrieved party to file a notice to the taxing officer within 14 days, specifying the items objected to and subsequently, the taxing officer shall forthwith record and forward to the objector the reasons for the decision on those items.

36. However, I have considered the ruling delivered on 16th May 2024, and find that it contains detailed reasons for the decision. In such circumstances, courts have consistently held that failure to request reasons is not fatal.

37. The court in the case of N.W. Amolo t/a Amolo Kibanya & Co. Advocates v Samson Keengu Nyamweya [2016] KEHC 3518 (KLR);

    18. To answer the above issue on the competence of the Reference, which issue I shall consider it as preliminary objection, which, if found to be in the affirmative will dispose of the entire reference, I must set out the procedure for challenging taxation undertaken by the taxing officer.

    19. Paragraph 11 of the Advocates Remuneration Order provides that:

        "11(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. 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 in chambers which shall be served on all the parties concerned, setting out the grounds of his objection.

        Any person aggrieved by the decision of the judge upon any objection referred to such judge under sub- paragraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

        The High Court shall have power in its discretion by order enlarge the time fixed by subparagraph(1) or subparagraph(2) of 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.

    20. From the above provisions, it is clear to me that any party wishing to object to a taxation decision must give notice of objection in writing within 14 days after such decision. The notice must also specify the items of taxation which are objected to. Upon receipt of such notice of

objection, the taxing officer is expected to record and forward to the objector the reasons for his decision on those items. The objector is then expected to, within 14 days from the date of receipt of the reasons file a reference by chamber summons and serve all the parties.

21. In situations where the reasons for the decision are contained in the taxing officer's ruling, it would not be necessary for the party objecting to issue a notice to the taxing officer. Seeking for reasons. The above position finds support in Ahmednassir Abdikadir & Company Advocates V National Bank of Kenya Ltd (2) [2006] 1EA 5 where the court held that:

" Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in he considered ruling, there is no need to seek for further reason simply because of the unfortunate wording of Subrule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.(emphasis added).

38. The above position was also approved by Odunga J (as he then was) in Evans Thiga Gaturu Advocate v Kenya Commercial Bank Ltd [2012] e KLR where the learned judge stated that:

" However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessary a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference."

39. Furthermore, in this case, the applicant was challenging the ruling that struck out the entire bill of costs on account of there being a remuneration agreement between the advocate and the respondent, not that the applicant is challenging some items in the taxation. In other words, there was no taxation of the bill of costs as presented.

40. Accordingly, the objection is rejected.

41. On the substantive issues, the Applicant contends that the taxing officer erred in finding that a valid remuneration agreement existed. The circumstances under which a judge may intefere with the taxing officer's exercise of judicial discretion are now well settled. These principles as set out in the First American Bank of Kenya vs Shah & Others [2002] 1 EA 64 are:

" 1. That the court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.

2. It would be an error of principle to take into account irrelevant factors and, according to the order itself, some of the relevant factors to be taken into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge;

3. If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for

reassessment unless the judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset the taxation because in its opinion, the amount awarded was high.

4. It is within the discretion of the taxing officer to increase or reduce the instructions fees and the amount of the increase or reduction is discretionary.

5. The Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it;

6. The full instructions fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees;

7. The mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the adversary.

42. Having established the above, this court now moves to determine whether or not the Taxing Officer erred in reaching the decision she did in her ruling of 16th May 2024.

43. The first question that this court will address is whether or not an advocate-client relationship existed between the Applicant and the Respondent. I have perused the record and I note that the firm of Muema & Associates filed a consent dated 9th November 2020, duly signed by the outgoing advocates, M/s Muema & Associates Advocates, allowing the Applicant's firm to come on record after judgment had been entered, for the respondent herein.

44. Order 9 Rule 9 of the Civil Procedure Rules provides that:

9. Change to be effected by order of court or consent of parties [Order 9, rule 9]

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—(a)upon an application with notice to all the parties; or(b)upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

45. The rationale for this provision was explained by this court in the case of Mashashi & another v Arch Diocese of Kisumu & 3 others [2023] KEHC 18335 (KLR).This court observed as follows;

" 2. I will answer this issue with authorities both judicial and statutory. In Nelly Wanjiru Njenga v Robinson Maina & 3 others [2021] e KLR the Court stated as follows and I concur that:

"The guiding provisions of law with regards to granting of leave for an Advocate to come on record after entry of Judgment is to be found in the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010 (CPR) provides that:

"When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such

change or intention to act in person shall not be effected without an order of the court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be."

The rationale of the said order has been set out by the Court in the case of S. K. Tarwad v Veronica Muehlemann [2019] eKLR where the Court held that:

> "18. In my view, the essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until a judgement has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away. Indeed, Order 9 does not foresee how Rule 9 can be sidestepped hence the enactment of Rule 10...."

"3. Further in the case of Connection Joint v Apollo Insurance [2006] e KLR, it was stated that:

"I do accept as correct, the Plaintiff's contention that if a party who was acting for himself, subsequently appointed an advocate, the said advocate did not have to first seek leave to come on record, even if he did come on record after judgement had been passed. I say that, because of the plain meaning of the wording of Order 3 rule 9 A of the Civil Procedure Rules. Furthermore, it may be recalled that the mischief which was targeted by the introduction of that rule, was the replacement of advocates who had worked hard to enable a case get to the stage of judgement. In my understanding, some unscrupulous persons used to either appoint new advocates or take over the personal conduct of cases, as soon as judgement had been granted in their favour. Thereafter, the advocates who had been replaced were left chasing after their legal fees, which was not fair to them, especially when the said advocates only learnt about their own replacements, after the same had taken effect."

"4. In Samuel Mathenge Ndiritu v Martha Wangare Wanjira & another [2017] eKLR, it was stated that:

"In the current application the firm of Prof. Tom Ojienda & Associates has filed a Notice of Change of Advocates but the change sought is not from the firm of Musyoki Mogaka & Co. Advocates but from the firm of Kogo & Munje Advocates. The latter firm of advocates appeared for the Applicant before the Tribunal. There is on record a consent filed by Musyoki Mogaka & Co. Advocates to work with the firm of Prof. Tom Ojienda of Prof. Tom Ojienda & Associates as the lead counsel. In my view there has been some compliance with Order 9 Rule 9 of the Civil Procedure Rules and I will let the matter rest."

5. In Manase Calleb Ananda t/a M Ananda and Co. Advocates v Bandari Savings and Credit Co-operative Society [2021] e KLR, it was stated as follows:

> " The provision envisages two different scenarios and the only commonalities are that there has been a Judgment and previously, there was advocate on record. In first scenario under rule 9(a), the new advocate or the party in person makes a formal application to the court with a notice to all parties who participated in the suit for grant of leave to come on record or act in person. Under this first scenario, the consent of the previous advocate is not necessary, but what a party must do is give notice to the other parties and then satisfy the Court to grant it leave for another advocate to come on record or to act in person. In the second scenario under Rule 9(b), the new advocate or party in person needs to secure the written consent of the previous advocate on record, file the consent in Court and then seek leave to come on record. My understanding of the second scenario under Rule 9(b) is that a formal written application is not necessary and that once the written consent has been filed, an oral or informal application would be sufficient to move the Court.
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> 27. In the Present case, it is not in dispute that the first scenario as provided for under Order 9 Rule 9(a) was fulfilled. The Record reflects that the firm of M/S Wameyo, Onyango & Associates sought leave to come on record vide an application dated 19/2/2020. It has not been shown that the said firm of advocates was denied the leave to come on record. That being the case, the consent of the firm of M/S Ananda & Company Advocates was not necessary. It is therefore my conclusion that the firm of M/S Wameyo, Onyango & Associates is properly on record."

46. The Court of Appeal in Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] eKLR emphasized:

> " The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in Taparn vs Roitei [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered.
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> "The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill."

47. In this case, the moment the former advocate for the respondent handed over the brief to the applicant by consent, and as the respondent did not object to instructing the applicant advocate to take over the brief from the former advocate, I have no doubt in my mind that the respondent did instruct the applicant advocate. In light of the above, this court is satisfied that the Taxing Officer in finding that there was indeed a nexus between the Applicant and the Respondent did not err.

> Whether the taxing officer erred in law in finding that there existed a legal fees agreement and consequently declining to tax the Bill of Costs.

48. The next question for determination is whether the Taxing Officer erred in principle in finding that she did not have jurisdiction to tax the Applicant's bill of costs as there existed a valid agreement for fees between the Advocate and the Client.

49. Section 45(1) of the *Advocates Act* provides:

> 1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—
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> (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;
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> (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.
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> Section 45(6) further provides that:
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> (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.

50. The taxing master's decision to decline jurisdiction to tax the bill was anchored on her finding that there was a valid agreement for fees between the parties, as contemplated under Section 45 of the *Advocates Act*. This provision as reproduced above authorizes an advocate and client to agree on fees before, during, or after the course of contentious or non-contentious work, provided the agreement is in writing and signed by the client or their authorized agent.

51. The Taxing Officer in the instant case carefully evaluated correspondence exchanged between the parties, including the letter dated 26th April 2021, which unambiguously confirmed an agreement for the payment of Kshs. 150,000 as full and final settlement of all outstanding fees, including in Nairobi HC JR Misc Application No. 403 of 2012, the matter in question and subject of the contentious bill of costs.

52. Following this letter, the Applicant filed a notice of withdrawal of the bill of costs JR No. 403 of 2012 and marked the bill of costs in Misc. Application No. E001 of 2021 as settled. The Applicant claims that the bill of costs in JR No.403 of 2012 was withdrawn because it had been filed in the wrong suit.

53. In this court's view, the Taxing Master rightly interpreted this sequence of events as corroborative of a meeting of minds and a conclusive agreement on fees. Her approach aligns with jurisprudence on the flexible nature of what may constitute a valid fee agreement. She correctly relied on the case of

Shiva Enterprises v Mwangi Njenga & Co. Advocates [2020] eKLR, where the Court held that such an agreement need not be in a formal document so long as written correspondence evidences consensus on the fees payable. She also relied on the case of Njuguna & Partners Advocates v Populite International Ltd [2023] KEELC 17603 (KLR), where Mbugua J. affirmed that correspondence is capable of giving rise to a fee agreement provided that it meets the requirements of the applicable law.

54. It is also notable that payment of Kshs.150,000 was made pursuant to a professional undertaking and this has been confirmed by Mr. Nzaku in his affidavit. This consideration coupled with the Applicant's decision to abandon both bills support the Respondent's claim that there was a negotiated understanding which formed a remuneration agreement within the meaning of Section 45 of the *Advocates Act*.

55. Additionally, in Nzaku & Nzaku Advocates v Tabitha Waithera Mararo [2020] eKLR, cited by the Taxing Officer, it was emphasized that a valid agreement under Section 45 of the *Advocates Act* must show a "meeting of the minds" and be "entered into freely". The taxing officer in the instant case evaluated the context of the correspondence and rightly found that the client's confirmation of the agreed fee, coupled with the advocate's conduct in withdrawing the earlier bill, reflected a concluded and enforceable agreement. The agreement was clear, unambiguous and voluntarily entered into.

56. This Court also notes that although the Applicant contends that the Advocate–Client bill of Costs filed on 26th February 2024 merely sought to correct an earlier procedural error of filing in the wrong matter, the withdrawn bill in JR No. 403 of 2012 was marked as withdrawn on 3rd May 2021, the fresh bill was not filed until nearly three years later. This inordinate delay, without adequate explanation, suggests that the application was an afterthought and lends credence to the Respondent's position that the taxation process was concluded and settled in 2021.

57. It is this court's humble view that the taxing master meticulously applied the law to the facts and correctly declined jurisdiction under Section 45(6) of the *Advocates Act*. Her findings are well-reasoned, supported by precedent, and grounded in the evidence on record. She appreciated the substantive legal requirements and did not proceed to tax a bill of costs that was the subject of a binding agreement. Her ruling embodies a proper exercise of judicial discretion and statutory interpretation. I do not find any error of principle in her approach and finding.

58. Accordingly, I find no merit in the Chamber Summons application dated 29th May 2024.It is therefore dismissed.

59. Costs are in the discretion of the court and to the successful party. However, this matter has been litigated upon for a while and it is only fair and just that the litigation comes to an end. I therefore order that each party shall bear its own costs.

60. This file is closed.

61. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JUNE 2025

R.E. ABURILI

JUDGE