



**ZZ & Company Advocates v Nyali Late Night Chemist & Medical Services Limited
(Miscellaneous Civil Application 00 of 2024) [2025] KEHC 8980 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION 00 OF 2024**

**J NGAAH, J
JUNE 12, 2025**

BETWEEN

ZZ & COMPANY ADVOCATES APPLICANT

AND

**NYALI LATE NIGHT CHEMIST & MEDICAL SERVICES
LIMITED RESPONDENT**

RULING

1. I take the unprecedented step of redacting the name of the applicant because of the allegations that have been made by the respondent against an advocate in the firm of advocates. This does not in any way suggest that I am shielding the advocate from the allegations; I will be asking the relevant bodies to conduct investigations on the allegations made and take appropriate action if the allegations turn out to be true.
2. The motion before court is by Nyali Late Night Chemist & Medical Services Limited which is named as the respondent in the application. It is expressed to be brought under article 159 of *the Constitution* and section 11 of the *Advocates Act*, cap. 16 and sections 3 and 89 of the *Civil Procedure Act*, cap. 21. It seeks the following orders:
 - “ 1. That this application be certified as extremely, urgent and be heard ex-parte and service thereof be dispensed with in the first instance.
 2. That this Honourable Court be pleased to issue an order of stay of taxation of the applicant's bill of costs scheduled for taxation until further orders of this court.
 3. That the application be placed before the judge for directions and or determination whether a retainer existed between the firm of ZZ Advocates and the Respondent herein.



4. That this Honourable Court be pleased to issue an order dismissing the application for taxation dated 9th April, 2024 by the firm of ZZ.
 5. Any other relief this Honourable court will deem fit to grant.
 6. That the costs of this application be provided for.”
3. The application is based on the affidavit of Dr. Joseph Bwire Sikudi who has introduced himself in the affidavit as the director of the respondent.
 4. According to Dr. Sikudi, on 30 June 2022, he contacted his advocate, one Elizabeth Mvoi Mwasaru for legal services. Mwasaru, who is apparently based in Nairobi could not take up the brief and, therefore, referred Dr. Sikudi to ZZ, the proprietor of the applicant firm.
 5. It would appear Dr. Sikudi’s company’s case was about or was related to the issue of distress for rent because he wanted court orders to stop his company’s landlord from “repossessing our premises and locking our business premises”. ZZ asked for a deposit of Kshs. 100,000/= for her fees which Dr. Sikudi duly paid.
 6. Even then, Dr. Sikudi thought the fee was too high and, therefore, he sought some counsel from a person he has described as “a retired judge” on whether the fee was reasonable. Perhaps, based on the information Dr. Sikudi received from the retired judge, he thought “that whatever paper work and/or application prepared by the applicant was not substantive in relation to the instructions I had given her and neither was it in tandem with the orders, I was seeking in court and could not in any way have the slightest probability to yield orders in court, she seems to have been praying for her own orders and not the ones I had instructed her to seek and upon questioning her about it, our communication flow broke down completely.”
 7. Further, ZZ is said to have gone “wild and crossed the professional boundary by telling me that if I really needed the orders, then I should buy the magistrate a cup of tea”. Dr. Sikudi understood this to mean he was being asked to bribe the magistrate handling his case in order to obtain court orders his counsel was seeking for.
 8. He implored the learned counsel to allow the magistrate decide his company’s application on merits but counsel is said to have insisted “it does not work that way in our courts, and that I must give cash for me to get the orders” .
 9. In proof of these allegations against ZZ, Dr. Sikudi has exhibited WhatsApp messages he exchanged with ZZ. Their conversation went as follows:

“ZZ: Good morning. File is with the magistrate. Are you in a position to buy him tea or I don’t broach the subject?”

Dr. Sikudi: Am so down now...If we secure the orders will see what good to do for him. But let us not serve those guys until I see the orders.”

ZZ: Oh ni sawa. Hapana. It doesn’t work like that. Yaani you give him cash then you get all the orders you want. Otherwise atapeana what he feels is...(illegible).
 10. According to Dr. Sikudi, this was the “breaking point” in his relationship with ZZ and, therefore, he insisted that counsel should not serve what I understand to be the pleadings that she had filed on Dr. Sikudi’s company’s behalf. In Dr. Sikudi’s view, he had withdrawn instructions from ZZ since counsel



was incapable of getting the orders he sought for on merit. Nonetheless, contrary to Dr. Sikudi's instructions, the learned counsel still served the pleadings.

11. Even then Dr. Sikudi obtained the services of another advocate who then wrote to ZZ asking her to account for the Kshs. 100,000/= she had been paid. Rather than account for the money, ZZ filed a bill of costs which Dr. Sikudi thinks it is in bad faith because, in his own words, the learned counsel was "...pushing me to give a bribe." It is against this background that Dr. Sikudi seeks the orders on the face of his company's application before court.
12. In response to the application, ZZ filed a replying affidavit in which she has deposed that she has not claimed that a retainer exists between her and Dr. Sikudi's company and, therefore, prayer 3 of the application has no factual basis.
13. As far as prayer 4 is concerned, the learned counsel has sworn that the question of dismissal of the bill of costs can be disposed of by the taxing master and need not be entertained by myself.
14. Counsel has also sworn that it has not been denied that Dr. Sikudi instructed her firm to file a court case and that she duly provided him with the requisite legal services. She has acknowledged having received Kshs. 100,000 from Dr. Sikudi "toward settling filing fees and disbursements".
15. ZZ has not said anything about Dr. Sikudi's allegations that she had informed him that court orders could only be obtained upon payment of a bribe to a magistrate. In short, counsel has not controverted allegations of corruption attributed to her by her erstwhile client.
16. I have had the opportunity to consider submissions filed by counsel for Dr. Sikudi's company and ZZ, who acted in person.
17. As noted, the application has been brought under article 159 of *the Constitution*; section 11 of the *Advocates Act*; and, sections 3 and 89 of the *Civil Procedure Act*. Article 159 is, of course, the basic constitutional provision on the source of judicial authority and the principles upon which that authority ought to be exercised. Being of universal character, this provision is not specific to applications such as the instant one in which the respondent company is aggrieved by a bill of costs filed against it.
18. But if the intention of the respondent company was to show that its constitutional rights under the article have been infringed or are threatened with violation, then it has fallen short of demonstrating how a bill of costs filed to assess the advocates costs for the services rendered has breached or threatened the breach of this particular provision of *the Constitution*.
19. On its part, section 11 of the *Advocates Act* has to do with foreign advocates practising in this country. It is obviously not applicable to the instant application since the application has nothing to do with practice of foreign advocates in Kenya. Section 3 of the *Civil Procedure Act* is all about special jurisdiction and the unlimited inherent powers of the court to do justice and section 89 has to do with procedure to be followed in the invocation and exercise of civil jurisdiction of the court.
20. The invocation of articles 159, sections 3 and 89, in their totality, is suggestive of the fact that, the respondent company has not been able to find any particular provision of the law specific to the circumstances of its application.
21. It is common ground that at some point in time, Dr. Sikudi instructed ZZ to act for his company in some case but their advocate-client relationship did not last long enough to see the case to its logical conclusion. It is also not in dispute that Dr. Sikudi made some payments of what he believed to be the legal fees but which, according to ZZ, was made on account of disbursements and court filing fees. In summary, Dr. Sikudi believes that he paid more than what ZZ services were worth, while ZZ, on the



other hand, is of the position that she has either not been paid or has not been sufficiently remunerated for the services she rendered.

22. Under section 48(1)(a)(b) and (c) of the *Advocates Act*, a client and an advocate may enter into a remuneration agreement on the advocates remuneration before, after or in the course of a contentious business; a contentious business in a civil matter; or, in a criminal matter.
23. Section 45(6), on the other hand, implies that where there is no agreement on the advocates remuneration, as is clearly the case in the instant application, the advocate may file a bill of costs for taxation. This provision reads 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.

24. Section 48 is to do with action for recovery of costs and section 48(6) thereof is clear that notwithstanding the advocate's right to file an action for recovery of costs, the advocate may as well file a bill of costs. It reads as follows:

Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.

25. So, where there is a dispute as to fees payable for services rendered by an advocate, that dispute can only be resolved in the context of proceedings for taxation of a bill of costs and the person upon whom that task falls is the taxing officer who is the registrar or the deputy registrar of this Honourable Court or courts of the status of the High Court. This is clear from paragraph 10 of the Advocates Remuneration Order which reads:

10. Taxing officer

The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.

26. Of course, the ultimate goal in taxation of advocate-client bills of costs is the determination whether the advocate is owed any money by the client for legal services rendered and if so, the extent to which he is owed. In determining these questions, the taxing officer is entitled and, indeed, he is competent to determine whether any bill of costs is properly before him. If, for instance, a question arises as to whether an advocate was ever instructed by any particular client against whom a bill has been drawn and filed, there is nothing untoward in the taxing officer determining, perhaps as a preliminary point, whether indeed there existed a client-advocate relationship between the parties before him. He will then proceed to tax the bill of costs, assuming the advocate-client relationship is established, subject, of course, to any other procedural or substantive legal requirements there may be.
27. As far as the relationship between Dr. Sikudi's company and ZZ is concerned, there is no doubt that it was an advocate-client relationship and, therefore, disputes over fees payable and whether it has been paid; and, of course, whether a bill of costs filed is properly before the taxing officer are questions that can properly and competently be determined by the taxing master.
28. In the ultimate, I reach the conclusion that any objection to the advocate-client bill of costs should be determined by the taxing master. I am minded that some of my remarks on this application may as well determine the direction the application ultimately takes, but I hasten to point out that these remarks



have been made to the extent that is necessary to explain why the application need to be remitted to the deputy registrar or taxing master for determination. It just happens that the reasons for remitting the application to the deputy registrar are, to a greater degree, inextricably linked with the reasons that may be pertinent in determination of the application. Needless to say, any party dissatisfied with the taxing master's decision would be entitled to invoke paragraph 11 of the Advocates Remuneration order and file a reference to the judge.

29. As I remit the application for the taxing master's consideration, the court's attention has been drawn to pertinent questions that have emerged in this application on the administration of justice and the conduct of ZZ as an advocate of this Honourable Court. The court cannot close its eyes to these issues and wish them away; if not for anything else, the court must act to protect the integrity of the justice system and the legal profession in this country.
30. From the conversation between Dr. Sikudi and ZZ, counsel is said to have asked her client:

“Good morning. File is with the magistrate. Are you in a position to buy him tea or I don't broach the subject?”
31. To any casual and objective observer, there is imputation of corruption in this statement. Rather than argue her case out, the learned counsel is clearly hatching a scheme, ostensibly, to bribe a magistrate. According to this scheme, if the counsel's client was “in a position to buy him tea” she would, somehow, raise the subject with the magistrate. It is clear that at the point of counsel initiating this scheme, no magistrate has asked for a bribe in Dr. Sikudi's case.
32. As to “what buying tea” entailed, counsel explained as follows:

“Yaani(sic) you give him cash then you get all the orders you want. Otherwise atapeana what he feels is...”
33. Although the magistrate who was allegedly with the file had not asked for any bribe, ZZ was imputing that she would “broach” the subject with the magistrate, bribe him and obtain the orders favourable to her client. To say that this is a grave indictment on the administration of justice and the reputation of the courts as bastions of justice in this country is an understatement. It is equally abhorrent to the legal profession, advocacy in particular.
34. The allegations are damaging not just to the magistrate who may have been handling this case, and who may not even have been aware of the scheme orchestrated by counsel, but against the judiciary as an institution and the administration of justice, generally. Without belabouring the point, they are allegations worth investigating further to establish whether indeed a crime or crimes have been committed and, in particular, whether the learned counsel has been bribing magistrates to obtain orders, as she alleges, or whether she has simply been collecting money from her clients, beyond her legitimate fees, on the pretext of bribing magistrates when the alleged bribes have not been solicited for. In the same breath, it is important to establish whether there is a case for unethical and professional misconduct on the part of the learned counsel.
35. The least this Honourable Court can do in the wake of Dr. Sikudi's allegations is to recommend investigations into these allegations and, for this reason, I direct the deputy registrar to transmit this ruling to the Law Society of Kenya and the Ethics and Anti-Corruption Commission for their appropriate action.

In the meantime, the application is remitted to the taxing master for disposal. It is so ordered.

SIGNED, DATED AND CIRCULATED ON THE CTS ON 12 JUNE 2025



**NGAAH JAIRUS
JUDGE**

