



REPUBLIC OF KENYA



**Ambhai t/a Komal Manufacturing Limited v Abdul t/a Lion King Chemicals (Commercial Case 005 of 2023) [2025] KEHC 9574 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9574 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 005 OF 2023**

**MA OTIENO, J**

**JULY 3, 2025**

**BETWEEN**

**PTEL ARVINDBHAI PURSHOTT AMBHAI T/A KOMAL MANUFACTURING LIMITED ..... APPLICANT**

**AND**

**MRS TASMEEN ADBUL T/A LION KING CHEMICALS ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Advocate/Applicant's Notice of Motion dated 27<sup>th</sup> November 2024, brought under Section 51(2) of the Advocates Act, Cap 16, Section 3A of the Civil Procedure Act, and Order 51 of the Civil Procedure Rules, 2010. The application seeks the following orders:
  - i. Judgment be entered in favour of the Applicant against the Respondent in the sum of Kshs. 1,127,662.99, being the certified taxed costs;
  - ii. Interest on the said sum at court rates from the date of taxation; and
  - iii. Costs of the Application.
2. The application is premised on the grounds on its face and supported by the affidavit of Charles M. Ongoto, Advocate, who depones that his firm rendered legal services to the Respondent in Milimani HCCOM 028 OF 2020, but the Respondent failed to pay the professional fees. Consequently, the firm filed a Bill of Costs dated 17th January 2023, which was taxed at Kshs. 1,127,662.99 by a Ruling dated 29th October 2024.
3. The Advocate further depones that despite service of the Certificate of Taxation, the Respondent has allegedly failed or neglected to settle the taxed amount, hence prompting the present application.



4. The Respondent has opposed the application through a Preliminary Objection dated 3<sup>rd</sup> April 2025, anchored on the ground that there are pending objection proceedings filed under Rule 11 of the Advocates Remuneration Order, challenging the Taxing Officer's decision. The Respondent contends that the Advocate was never instructed to act for them, and therefore, the taxation and subsequent application are both premature and untenable.
5. In reply, the Advocate filed a Replying Affidavit sworn on 17<sup>th</sup> December 2024, raising three key points: That the Respondent's current advocates, Wachakana & Co. Advocates, are improperly on record, having failed to comply with Order 9 Rule 9 of the Civil Procedure Rules; That the Respondent did, in fact, instruct the Applicant, and had ample opportunity to raise objections earlier; and That the Preliminary Objection is a dilatory tactic, merely aimed at avoiding payment of the taxed costs.
6. Both the Application and Preliminary Objection were heard together and canvassed by way of written submissions. The Advocate filed his submissions dated 1<sup>st</sup> April 2025, whilst those of the Respondent are dated 9<sup>th</sup> April 2025.

### **Analysis and Determination**

7. I have carefully considered the Application filed herein, the Respondent's Notice of Preliminary Objection, and the parties' submissions in support of their respective positions, and the applicable law. I identify the following issues for determination:
  - i. Whether judgment should be entered for the Advocate under Section 51(2) of the *Advocates Act*;
  - ii. Whether the Preliminary Objection raises valid grounds to defeat the application.
8. Section 51(2) of the *Advocates Act* provides that a certificate of taxation is prima facie evidence of the amount due from a client to an advocate, and the Court may enter judgment for the sum certified, unless there is a dispute as to retainer.
9. The Section is clear that: -

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs 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.”
10. The principles governing entry of judgment under this provision were articulated in cases such as *Lubulellah & Associates Advocates v N K Brothers Ltd* [2014] eKLR, *Kalonzo Musyoka & Another v Rustam Hira* [2006] eKLR, and *Ndungu Githuka & Co. Advocates v Geoffrey Mariaso Ole Mailoy* [2019] eKLR, where courts have consistently held that where the retainer is not contested and no reference is filed, judgment ought to follow as a matter of course.
11. In the present case, the Certificate of Taxation dated 29<sup>th</sup> October 2024 is not contested on quantum, but the Respondent alleges lack of retainer and has filed objection proceedings. The law is settled that where there is a genuine dispute as to the existence of a retainer, the Court must first resolve that issue before entering judgment under Section 51(2).



12. In the case of Wilfred N. Konosi T/A Konosi & Co. Advocates v Flamco Ltd, [2017] eKLR, the Court of Appeal was explicit that:

“The nexus between the Advocate and his/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”.

13. However, it is trite that a dispute as to retainer must be raised promptly and substantively. See the case of Njuguna Kahari & Kiai Advocates v Gacanga (Environment and Land Miscellaneous Application E040 of 2023) [2024] KEELC 3868 (KLR) , where the Court (M.D. Mwangi J) observed that the issue whether or not there was a retainer must therefore be determined first before the Taxing Officer embarks on taxing the Advocate-Client Bill of Costs.

14. In this case, the Respondent participated in the taxation process and only raised the issue of retainer after the Bill had been taxed and the Certificate issued. There is no indication that the Respondent sought to stay the taxation proceedings or applied for the setting aside of the taxed amount under Rule 11(4) of the Advocates Remuneration Order.

15. Furthermore, the mere filing of an objection without prosecuting it to finality does not automatically bar the entry of judgment under Section 51(2). The Respondent has not demonstrated that they have obtained a stay of execution or an order setting aside the Certificate of Taxation.

16. As to the issue of representation, whether Wachakana & Co. Advocates are properly on record or not is a procedural question. While compliance with Order 9 Rule 9 is required post-judgment, failure to comply does not necessarily bar a party from being heard on a preliminary objection, especially where the objection raises a pure point of law.

17. Nonetheless, the objection here is intertwined with facts, including whether or not there was a retainer—hence it ceases to be a proper preliminary objection as defined in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.

18. The Preliminary Objection dated 3<sup>rd</sup> April 2025 is found to be misconceived, premature, and is accordingly dismissed.

19. In the circumstances, the Court is persuaded that the Certificate of Taxation dated 29<sup>th</sup> October 2024 stands valid and unchallenged in law. There being no substantive stay or setting aside of the said certificate, the Court finds that the Advocate/Applicant is entitled to judgment under Section 51(2) of the *Advocates Act*.

20. On interest applicable, Rule 7 of the Advocates Remuneration Order entitles an Advocate to claim interest at 14% per annum on their costs from one month after delivery of the bill, in the following terms: -

“An advocate may charge interests at 14% per annum on his disbursement and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, such claim for interests is raised before the amount of the bill has been paid or tendered in full.”



21. In the case of *Amondi & Co Advocates v County Government of Kisumu* [2021] eKLR, the Court held as follows:-

“Whilst Section 26 of the *Civil Procedure Act* authorizes the Court to award any reasonable rate of interest; the *Advocates Act* specifies the rate as 14% per annum. And whilst under the *Civil Procedure Act* the Court has discretion to award interest at 3 different levels, the Court lacks such discretion under the *Advocates Act*. Under the *Advocates Act*, the interest may be awarded from the expiration of one month from the date when the Bill was delivered by the Advocate to the Client.

22. In the premises, I award interest at the rate of 14% from the date of the Certificate of Costs.

**Disposition**

23. In light of the foregoing, I find that the Advocate/Applicant’s Application dated 27<sup>th</sup> November 2024 is merited and is hereby allowed. Accordingly, I make the following orders:

- i. Judgment is hereby entered in favour of the Advocate/Applicant against the Client/ Respondent in the sum of Kshs. 1,127,662.99/- being the amount stated in the Certificate of Costs issued herein
- ii. Interest shall accrue on the said sum at the rate of 14% per annum from 29<sup>th</sup> November, 2024, until payment in full.
- iii. The Advocate shall have the costs of this Application, which is hereby assessed at Kshs. 20,000/-.

24. It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**ADO MOSES**

**JUDGE**

In the presence of: -

C/A – Moses

.....for Advocate/Applicant

.....for Respondent

