



REPUBLIC OF KENYA



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RBZ Advocates LLP v China State Construction Engineering Corporation Limited (Commercial Case E152 of 2022) [2025] KEHC 10366 (KLR) (Commercial and Tax) (18 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10366 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E152 OF 2022**

H NAMISI, J

JULY 18, 2025

BETWEEN

RBZ ADVOCATES LLP APPLICANT

AND

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION
LIMITED RESPONDENT**

RULING

1. On 25 February 2023, the Applicant herein filed an Advocate-Client Bill of Costs. The Respondent opposed the same, contending that there was an agreement on fees as provided under section 45(1) of the *Advocates Act*. On 24 September 2024, the Taxing Officer dismissed the Bill of Costs on the basis that there was a valid and enforceable agreement between the Advocate/Applicant and Client/Respondent, thus divesting the Taxing Officer of jurisdiction to tax the Bill of Costs.
2. Aggrieved by the decision, the Applicant filed the present Chamber Summons dated 25 September 2024, seeking the following orders:
 - i. Spent;
 - ii. That the Honourable Court be pleased to set aside the Taxing Officer's decision and Ruling delivered on 24 September 2024, as it relates to the reasoning and determination of the Bill;
 - iii. That this Honourable Court be pleased to adjust the figure, re-assess the fees due in the Applicant's Bill of Costs dated 25 February 2022 and/or issue further/necessary orders as it may deem fit;
 - iv. That the costs of this application be provided for;



3. The Application is premised on the grounds that the Taxing Officer acted contrary to well settled principles of law by dismissing the Bill of Costs and that the Taxing Officer misdirected herself on the law by stating that there was an agreement and, therefore, she lacked jurisdiction.
4. The Respondent filed Ground of Opposition dated 19 November 2024 as well as a Replying Affidavit. The Respondent avers that the orders sought herein constitute a violation of Section 45 of the Advocates Act. The Court has no jurisdiction to interfere with the terms of a contract that parties freely agreed upon.

The Advocate – Client Relationship

5. In March 2021, the Client/Respondent approached the Advocate/Applicant for legal services to resolve a dispute with a third party, ASP Company Limited. The dispute involved a sum of Usd 5,870,332.32, which is equivalent to Kshs 862,938,850/=. The Advocate/Applicant was instructed to review the documentation, provide legal advice, issue demand notices and draft pleadings to refer the dispute to arbitration.
6. The dispute with ASP Company Ltd was amicably resolved on or about 18 July 2021, leading to the successful refund of the disputed sum. Following this successful resolution, the Advocate/Applicant issued a request for settlement of its fees.
7. The Advocate/Applicant averred that the Client/Respondent proposed a settlement offer for the fees due, for Kshs 200,000/=. This offer was contingent upon, or coupled with, a proposal for the Advocate/Applicant to handle the conveyancing for a significant apartment development project known as ALBA Gardens. The project was valued at Kshs 2.5 billion, with projected fees of Kshs 25 million. The Advocate/Applicant submitted that there was subsequent email correspondence and discussions regarding the drafting of Letters of Offer and Sale Agreements for the new project.
8. It is the Advocate/Applicant's contention that the Client/Respondent swindled them by withdrawing the project offer and unilaterally insisting on paying only Kshs 200,000/= for the services rendered in the ASP Company Ltd dispute.
9. The Client/Respondent's primary assertion is that a binding agreement existed between the parties, capping the Advocate's fees at Ksh 200,000/=. According to the Respondent, this agreement is supported by an email dated 5 August 2021 from the Advocate/Applicant to the Client/Respondent stating:

“Dear Sir,

Further to our discussions, find enclosed herewith an amended fee note for your settlement.”

Analysis and Determination

10. I have carefully considered the Application, responses and the submissions herein. I have identified the following as the issues for determination herein:
 - i. Whether there exists a valid and enforceable retainer agreement?
 - ii. Whether the Taxing Master has jurisdiction to tax the Bill of Costs dated 25 February 2022;
 - iii. Who shall bear costs of this reference



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

Subject to section 46 and whether or no an order is in force under section 44, an Advocate and his client may –

 - 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;
12. Section 45(6) of the *Act* further provides:

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.
13. Section 45 (1) sets the standard for the validity of a remuneration agreement that purports to oust the ordinary process of taxation. This requirement places a significant burden on the party asserting the existence of such an agreement to demonstrate that the alleged agreement, particularly the email dated 5 August 2021, and subsequent actions, unequivocally satisfy the criterion. The question before this Court, therefore, is whether the email correspondence created a binding agreement that ousted the jurisdiction of the Taxing Officer.
14. In the case of *Omulele & Tollo Advocates vs Mount Holdings Ltd* CA 75 of 2015, the Court held;

“A retainer means the instruction, employment or engagement of an advocate by his client. On the other hand, a retainer agreement is merely a contract in writing prescribing the terms of engagement of an advocate by his client, including fees payable. Therefore, it is submitted while a retainer denotes a relationship between parties, the retainer agreement is merely the physical written document or manifestation of such a relationship...”
15. In *Sheetal Kapila v Narriman Khan Brunlehner* [2021] eKLR, a signed letter from the client was deemed to constitute a valid remuneration agreement that ousted the Court’s jurisdiction under section 45(6). Similarly, in *Githuku & Githuku Co. Advocates -vs- Enoch Wamalwa Kibunguchy* (Misc Application No. 1 of 2018) KEHC 6596, affirmed that for a retainer agreement to be valid and binding under section 45, it must be in writing and signed by the client or his agent.
16. A retainer agreement does not necessarily have to be in writing but may also be inferred from the conduct of the parties or the circumstances of the case. In the reference before this court, the Taxing Officer referred to the email correspondence dated 5 August 2021 between the parties which according to her was evident that the parties had entered into a retainer agreement.
17. The Client/Respondent argued that a valid fee agreement, sufficient to meet the requirements of section 45, can be drawn from the correspondence. They argued that the email of 5 August 2021 constituted such an agreement. They relied on the cases of *Shiva Enterprises -vs- Mwangi Njenga & Company Advocates* eKLR and *D. Njogu & Company Advocates -vs- NBK Ltd* [2016] eKLR, both of which suggest that a formal document is not always necessary and that an agreement can be construed from letters revealing an intent to fix fees.
18. The Advocate/Applicant argued that an email sent by one party cannot constitute a retainer agreement since, in this instance, the same was not signed by the Client/Respondent. They submitted that the Taxing Officer erred by interpreting the email of 5 August 2021 in isolation, disregarding the broader context of the fee discussions.



19. I have keenly perused the Taxing Officer's decision and reasons for it. In my view, the Taxing Officer considered the material placed before her and properly found the existence of the retainer agreement though the email correspondence of 5 August 2021. In fact, the email of 5 August 2021 contains an amended fee note, sent after the initial fee note of 8 July 2021. On this, the Taxing Officer was right.
20. The fact that the Advocate/Applicant was duped into settling for less fees based on a promise of more legal work, is not a reason to challenge the agreement that they walked into, with eyes wide open.
21. It is, therefore, the finding by this Court that there was a agreement between the Applicant and the Respondent. I find no merit in the Application dated 25 September 2024 and the same is dismissed with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Mr. Odipo

Respondent: Ms. Musavakwa h/b Ms. Wacuka

Court Assistant: Libertine Achieng

