



**Kenya Local Government Workers Union v National Union of Water & Sewerage Employees & another; Katunga Mbuvi & Co Advocates (Applicant); Kenya County Government Workers Union (Respondent) (Civil Miscellaneous Application 4 of 2022) [2024] KEHC 3682 (KLR) (Civ) (2 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3682 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS APPLICATION 4 OF 2022**

**AN ONGERI, J**

**APRIL 2, 2024**

**BETWEEN**

**KENYA LOCAL GOVERNMENT WORKERS UNION ..... PLAINTIFF**

**AND**

**NATIONAL UNION OF WATER & SEWERAGE EMPLOYEES 1<sup>ST</sup> DEFENDANT**

**RASHID K SHAKOMBO ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**KATUNGA MBUVI & CO ADVOCATES ..... APPLICANT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... RESPONDENT**

**RULING**

1. There are two opposing applications filed herein. The one dated 29/5/2023 is a reference against the taxed costs the one dated 29/8/2023 is seeking judgment of the taxed bill of costs.
2. 1st application dated 29/5/2023 is seeking the following prayers;
  - i. That there be a stay of execution of the taxing officer's ruling delivered on 25th May, 2023 taxing the Respondent Advocate's Bill of Costs dated 23rd November, 2021 at Kshs.3,576,381/=, pending the hearing and determination of this application.



- ii. That the decision/Ruling of the Taxing Officer delivered on 25th May, 2023 on the Respondent's Advocate-Client Bill of Costs dated 23rd November, 2021 taxing the Bill of Costs at Kshs.3, 576,381/=, and all the consequential orders emanating therefrom, be set aside, vacated, and/or reviewed by the Honorable Court in their entirety.
  - iii. That the Honorable Court be pleased to strike out the Advocate's bill of costs dated 23rd November, 2021 for being statutorily time-barred.
  - iv. That in the alternative, and without prejudice to the foregoing, this Honorable Court be pleased to remit the entire Advocate-Client Bill of Costs dated 23rd November, 2021 for reconsideration/re-taxation by a different taxing officer with appropriate directions in respect of items 1 to 31 thereof, the taxing officer having committed egregious errors of principle which affect the taxation of the entire bill.
  - v. That the Honorable Court be pleased to grant any other order and/or directions as it deems fit, just, and fair in the circumstances of the case.
  - vi. That the costs of this application be provided for and the same be borne by the respondent herein.
3. The application dated 29/5/2023 is based on the following grounds;
- i. That after considering the Advocate's Respondent's Bill of Costs dated 23<sup>rd</sup> November, 2021 together with the parties' responses to and submissions on the same, the Deputy Registrar of this Honorable Court (Honorable E. C. Chelule) sitting as a Taxing Officer delivered his ruling on the Bill on 25<sup>th</sup> May, 2023 whereby he taxed the said Bill at Kshs.3,576,381/=.
  - ii. That aggrieved by the Taxing Officer's decision, the Client Applicant filed and served its Notice of Objection to the Taxing Officer's decision on the Advocate's Bill on 29<sup>th</sup> May, 2023 in compliance with the requirement of Paragraph 11(1) of the Advocates Remuneration Order, 1962.
  - iii. That the Taxing Officer committed an error of principle by erroneously finding and holding that the matter from which the Advocate's bill emanated, being the Civil Case No. 378 of 2006, was seeking prerogative (judicial review) orders, when no such orders were sought in that matter and this fact was never pleaded by the Advocate in his bill of costs, which, in fact, pleaded only permanent restraining injunction as is clearly seen from the Plaintiff.
  - iv. That from a cursory perusal of the Plaintiff clearly shows that there were no prerogative orders that were being sought in the suit from which the Advocate's bill emanates, therefore, the taxing officer erred by holding that the subject matter of the parent file was a prerogative suit.
  - v. That the Taxing Officer committed an error of principle and misdirected herself in coming to the conclusion that the applicable Schedule of the 2006 Advocates Remuneration Order is Schedule VI (1) (j) thereof, thereby applying wrong provisions/principles of the law in determining the minimum basic fees, and consequently reaching wrong conclusions on instruction fees awardable to the Advocate herein.
  - vi. That the taxing officer erred in principle by ignoring and/or failing to take into account and consider the Applicant's submission to the effect that the applicable schedule of the 2006 advocates remuneration order is schedule VI (1) (j) thereof.



- vii. That the learned Deputy Registrar abused her discretion and misdirected himself on the instruction fees payable to the Advocate by awarding an instruction fee which is manifestly high and/or excessive as to justify an interference that it is based on an error of principle.
- viii. That even if the Taxing Officer committed applied the correct schedule, which she did not, she still made an error of principle by wrongly applying and abusing her discretion in determining the instruction fees payable to the Advocate when she used that discretion to enhance the instruction fees from the minimum of Kshs.28,000 to Kshs.2,000,000/= an increase which is 71.42 times the basic instruction fees!
- ix. That the taxing officer made an error of principle by raising items 2 to 23 by 50% or one-half, when according to the remuneration order, the only item that is to be increased by one and half is the instruction fees and not the other items.
- x. That the taxing officer, instead of first increasing the instruction fees by one half and then adding the other items, she first added the other items to bring the total to Kshs.2,055,391 and then increased by 50%; by doing so, she erroneously enhanced the other items by one half, thereby committing an error of principle. .
- xi. That the Taxing Officer made an error of principle by ignoring and/or failing to consider, factor in, and/or take into account one of the relevant factors that need to be taken into account on taxation, being the advance payments of Kshs.1,700,000/= already made by the Applicant to the Advocate in this matter and adduced vide the Applicant's further affidavit sworn on 25<sup>th</sup> January, 2023.
- xii. That it is instructive to note that of the Kshs.1,700,000/= the Advocate had himself acknowledged receiving Kshs.900,000/= from the Client, but the taxing officer failed to consider the same.
- xiii. That the learned taxing master committed an error of principle by failing to set out with the required level of specificity, particularity, and manner of clarity the complexity of the issues, the nature and importance of the matter to parties, the responsibility on Counsel, the interest of parties, and/or the volumes of documentation involved in the matter giving rise to the bill of costs, so as to justify the unreasonable increase of instruction fees from Kshs.28,000/= to Kshs.2,000,000/=
- xiv. That the taxing officer committed an error in principle by considering or taking into account irrelevant and inapplicable factors such as the amount involved (even though the same was not discernable from the pleadings), thereby leading to the award of grossly excessive and gratuitous instruction fees to the Advocate.
- xv. That the taxing master committed an error of principle by overemphasizing the diligence applied and the research done by the Advocate in the matter from which the Advocate's bill emanates, being civil case no, 378 of 2006.
- xvi. That the taxing officer committed an error in principle and misdirected herself by considering factors or matters that were neither pleaded nor submitted upon by the Advocate, including the nature and extent of the research conducted by the Advocate herein.
- xvii. That the learned taxing master committed an error of principle by failing, refusing, and/or ignoring to consider and pronounce herself on the Applicant's notice of preliminary objections



filed before the employment and labor relations court dated 2<sup>nd</sup> March, 2022, despite having been brought to the Court's attention.

- xviii. That the Kshs.2,000,000/= and ksh,3,576,381/= awarded by the taxing officer to the Advocate herein as instruction fees and the total costs payable to the Advocate, respectively, are so manifestly high and/or excessive as to amount to an injustice to the Client Applicant herein, considering the work the Advocate actually did in the matter, and to justify an interference by the Honourable Judge.
  - xix. That it is in the interest of justice and fairness that this Honourable Court grants the orders sought.
  - xx. That the Respondent will not suffer any prejudice if the orders sought in this application are granted
4. The 2<sup>nd</sup> application dated 29/8/2023 is seeking the following orders;
- i. That the Certificate of Taxation dated 29<sup>th</sup> June, 2023 for an amount of ksh.3,576,381.00 be entered as the final judgment for costs in this suit.
  - ii. That interest of 14% to accrue from 29<sup>th</sup> June, 2023 the date of issue of Certificate of Taxation till payment in full.
  - iii. That costs of this application be provided for.

#### Grounds

- i. That the applicant represented the interests of the Respondent 'in Civil Suit No 378 Of 2006 At The High Court In Nairobi which matter was determined to the Client's satisfaction.
  - ii. That respondent being a client to the applicant and despite his undertaking to settle the advocates fees failed to pay the agreed fees therefore necessitating filing of a bill of costs in Court.
  - iii. That the Taxing Officer, Deputy Registrar Hon. E. C. Chelule taxed the Bill at Ksh.3,576,381.00 and a Certificate of Costs was issued by Hon. L. A. Mumassabba dated 29<sup>th</sup> June, 2023
  - iv. That the bill of costs dated 23<sup>d</sup> November, 2021 has been subjected to many applications and references by the respondent herein and it is only fair that the applicant enjoys fruits of his labour.
  - v. That the aforesaid Certificate of costs has not been altered, set aside or varied since it was issued.
5. The parties filed rival submissions as follows; the applicant submitted that it filed a preliminary objection dated 2/3/2022 challenging the jurisdiction of the taxing master on the basis that the bill was statutorily time barred.
6. However, the taxing master failed to pronounce herself on this critical issue. The applicant indicated that the retainer came to an end on 27/8/2006 and therefore by virtue of section 4 (1) (a) of the Limitations Act the bill effectively became statute barred on 27/8/2012.
7. The applicant submitted that the taxing officer applied the wrong schedule of the Advocate Remuneration Order. Schedule VI (I) (J) was not the applicable schedule because it only applies to



suits where one seeks prerogative orders. The advocates brief however was to obtain a permanent injunction against Nairobi Water and Sewerage Trade Union from purporting to represent workers of Nairobi Water and Sewerage Company. It was the applicant's argument that an error as to the applicable schedule leads to an automatic setting aside.

8. The applicant submitted further that the taxing officer failed to consider the payment of Kshs. 1,700,000 that the client had made to the advocate. The taxing master additionally failed to consider the payments that the advocate conceded to have received totaling Kshs. 900,000. This failure was a serious error of principle that would amount to unjust enrichment of the advocate.
9. The applicant argued that the taxing officer awarded the advocate instruction fees of Kshs. 2,000,000 having found erroneously so, that the base fee is Kshs. 28,000 the unwarranted increase in the instruction fee was manifestly excessive on the basis that counsel undertook rigorous research and diligently and successfully presented the case. It was the applicant's argument that it is expected all advocates know the requirements to be satisfied for the grant of injunctions.
10. The respondent on the other hand submitted that the taxing master noted that the Bill of Costs emanates from a matter that was filed in 2006 and hence the applicable law is [Advocates Remuneration \(Amendment\) Order 2006](#).
11. That the Taxing master clearly indicated that the correct schedule is Schedule VI (B) of the [Advocates Remuneration \(Amendment\) Order 2006](#). The respondent argued that the taxing officer was just and fair and did not err in principle.
12. The respondent/advocate rendered legal services to the applicant herein. The applicant/client has not denied that the last interaction or and engagement between the respondent/advocate and applicant/client was on 24/11/2020, and the payment of Ksh. 300,000 to the respondent/advocate. The said cheques amounting to Ksh. 900,000 was part payment of legal fees for all the 25 Matters being handled by the advocate herein on behalf of the respondent. The said cheques were not specific to this matter.
13. The respondent argued that, the applicant does not deny that the advocate worked for the union satisfactorily. The applicant further does not deny that they never paid all the legal fees. It is for this reason and in the interest of justice and fairness that the taxing master was legally and procedurally guided in arriving at the figure that she awarded.
14. On the instruction fee of Kshs. 2,000,000 being excessive, the respondent submitted that that the instruction fee is taxed in accordance to the complexity, duration and attendance of the matter in court.
15. The respondent argued that the applicant is using all tactics to try to outwit the course of justice and refuse to pay for legal services that were rendered.
16. The reference is challenging the bill of costs on the ground that it is statutory time barred and also on the ground that the instruction fee awarded is excessive.
17. The issues for determination in the two applications are as follows;
  - i. Whether the bill of costs was statutory time barred.
  - ii. Whether the amount awarded as instruction fee is excessive.
  - iii. Whether the advocate is entitled to judgment on the taxed costs.
18. On the issue as to whether the bill is statutory time barred, time begins to run from the date of the judgment where no appeal is preferred.



19. If there is an appeal from the judgment in the action, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided except where the work is continuous in which case time starts running from the lawful ending of the retainer.

20. In *Halsbury's Laws of England*, 4th Edition, Volume 28 at paragraph 879 it is stated as follows as regards of recovery of costs by a solicitor: –

“In relation to continuous work by a solicitor, such as the bringing and prosecuting or defending an action; if a solicitor sues for his costs in an action, the statute of limitation only begins to run from the date of termination of the action or of the lawful ending of the retainer of the solicitor;

if there is an appeal from the judgment in the action, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided;

if judgment has been given and there is no appeal, time runs from the judgment, and subsequent items of costs incidental to the business of the action will not take the earlier items out of the statute.

In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work.

A solicitor cannot sue a client for costs until the expiration of one month after delivery of a signed bill, but nevertheless time runs against a solicitor from the completion of the work and not from the delivery of the bill. If some only of items included in the bill are statute-barred, the solicitor may recover in respect of the balance.”

21. The Advocate submitted that the last interaction or/and engagement between the respondent/advocate and applicant/client was on 24/11/2020, and the payment of Ksh. 300,000 was made to the respondent/advocate.

22. The limitation period therefore started to run from 24/11/2020 since the engagement of the respondent/advocate was continuous.

23. Section 4(1) of the *Limitation of Actions Act* in this regard provides that:-

“The following actions may not be brought after the end of six years from the date on which the cause of action accrued:-

- (a) actions founded on contract;
- (b) actions to enforce recognizance;
- (c) actions to enforce an award;
- (d) actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law”.

24. I find that the issue of the retainer was not disputed by the applicant/client and therefore the bill of costs was not statute time barred.

25. In the case of *Omulele & Tollo Advocates v Mount Holdings Ltd* C.A.75 of 2015 the court held that;

“A retainer means the instruction, employment or engagement of an advocate by his client.”



- 26. The retainer relationship between the applicant/client and the respondent/advocate is based on contract and the limitation period is 6 years from the lawful ending of the retainer of the solicitor.
- 27. In the current case the last interaction or/and engagement between the respondent/advocate and applicant/client was on 24/11/2020 and the six years have not elapsed.
- 28. On the issue as to whether the amount awarded as instruction fee is excessive, the Court would not interfere with exercise of discretion by the taxing officer except under certain circumstances.
- 29. I find that the instruction fee was taxed in accordance to the complexity, duration and attendance of the matter in court.
- 30. In case of Ngati & 3 others v Embakaso Village Craft Curios & Jua Kali Association & 7 others (Environment & Land Case 614 of 2012) [2023] KEELC 21068 (KLR) (26 October 2023) (Ruling) the court relied on the Supreme Court of Uganda in the case in the case of *Bank of Uganda versus Banco Arabe Espanol* SC Civil Application No. 23 of 1999, where the court stated thus;

“save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount. Secondly, an exceptional case is where it is shown expressly or by inference in assessing or arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, application of a wrong principle is capable of being inferred of an award of an amount which is manifestly excessive or manifestly low”

- 31. I find no reason to deny the advocate the taxed costs.
- 32. I find that the reference dated 29/5/2023 against the taxed costs lacks in merit and I accordingly dismiss it.
- 33. I allow the application dated 29/8/2023 which is seeking judgment on the taxed bill of costs.
- 34. Judgment be and is hereby entered in the sum of 3,576,381 together with interest at 14% from the date of the certificate of costs until payment in full.
- 35. Each party to bear its own costs of the two rival applications.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 2<sup>ND</sup> DAY OF APRIL, 2024.**

.....  
**A. N. ONGERI**  
**JUDGE**

In the presence of:  
 ..... for the Applicant  
 ..... for the 1<sup>st</sup> & 2<sup>nd</sup> Respondent  
 ..... For the 3<sup>rd</sup> Respondent