



**PI Samba & Co. Advocates v Buzeki Enterprises Limited (Miscellaneous Reference Application E1054 of 2020) [2024] KEHC 6860 (KLR) (Commercial and Tax) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6860 (KLR)

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

**MISCELLANEOUS REFERENCE APPLICATION E1054 OF 2020**

**FG MUGAMBI, J**

**JUNE 7, 2024**

**BETWEEN**

**PI SAMBA & CO. ADVOCATES ..... APPLICANT**

**AND**

**BUZEKI ENTERPRISES LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines two applications arising out of a taxation from an advocate/client relationship. Following a fall out between the parties, the advocate filed an amended bill of costs dated 17<sup>th</sup> February 2021 which was taxed at Kshs. 100,000/= . A reference was filed to this court and by a ruling delivered on 4<sup>th</sup> August, 2022 this Honourable Court (Chepkwony, J) the subject bill was referred for taxation afresh. The fresh taxation precipitated in the ruling of the taxing master of 23<sup>rd</sup> February, 2023 which is the subject of this reference.
2. The first application is the client’s reference application dated 8<sup>th</sup> March 2023 which seeks to set aside the taxation ruling of 23<sup>rd</sup> February 2023. The client’s main bone of contention is that the learned taxing master failed to consider the submissions filed by the client. The said submissions were to the extent that the advocate was paid in full for the non-contentious work that they were instructed to carry out by the client an at orally agreed upon rate of Kshs. 150,000/= per month.
3. To the extent that these amounts were not considered when taxing the bill meant that the amount awarded was excessive and unreasonable since the advocate’s role was very limited to following up on the disbursement of funds.
4. The application is opposed by way of a replying affidavit sworn by Pennynah Sambaon 23<sup>rd</sup> October 2023. The advocate’s case is that the client had been afforded a fair opportunity to be heard but had never filed any submissions in opposition to the Amended Bill since the same was filed and served. She



stated that the claim that there existed an agreement for fees between the parties was already resolved by this Court's Ruling of 4<sup>th</sup> August, 2022. Consequently, the advocate states that the application dated 8<sup>th</sup> March, 2023 is premised on grounds and matters that are res judicata.

5. The application was canvassed by way of written submissions which I have considered alongside the pleadings, evidence and authorities cited by the parties.

### **Analysis and determination**

6. I have carefully considered the rival pleadings, arguments and authorities submitted by respective parties. The principles of varying or setting aside a taxing master's decision are well crystallized.
7. I am guided by the decision of this court in *First American Bank of Kenya V Shah and Others*, [2002] EA64 and *Joreth Ltd v Kigano and Associates*, [2002] 1 EA 92, it has been well settled that the taxing master's judicial discretion can only be interfered with either based on an error of principle, or that the fee awarded is manifestly excessive as to justify an inference that it was based on an error of principle and where discretion is exercised capriciously and in abuse of the proper application of the correct principles of law.
8. The main bone of contention as is evidenced in the application by the client is the failure by the learned taxing master to consider her submission that the advocate had been paid a monthly agreed upon amount of Kshs. 150,000/=. The advocate submits that the said submissions dated 5<sup>th</sup> December, 2022 were filed after the court session of 5<sup>th</sup> December, 2022, months after the taxation proceedings were instituted and could therefore not form part of the court record meriting any consideration.
9. I have looked at the impugned ruling. The taxing master notes that the client did not file any submissions in response to the amended bill of costs. Even if for finality sake I were to consider those submissions, the gist of the submissions is that there was an oral agreement for 150,000/= monthly payment to the advocate.
10. The taxing officer correctly acknowledged that this Court had already determined that question, and was guided by the pronouncement of the Judge. At paragraph 2 of the ruling the taxing officer notes:

“The superior court in its ruling delivered by Justice D.O. Chepkwony on 13<sup>th</sup> July 2021 found that there was no retainer agreement and hence the advocate/applicant was entitled to institute a bill of costs before the taxing officer for determination to recover her legal fees in the matter.”
11. I therefore find that this is an issue on which this court has pronounced itself and on which I am precluded from saying anything more.
12. I have looked at the impugned ruling. The taxing officer, proceeding on the basis that the advocate was entitled to tax a bill of costs, correctly directed herself on the principles for determining the subject matter value for purposes of instruction fees. This is at paragraphs 10, 11 and 12 of the impugned ruling. The taxing master further gives reasons for the exercise of the discretion including the nature and scope of the work at hand.
13. It is a well settled point in taxation that for this court to interfere with the discretion of a taxing master there needs to be more than just the mere fact that this court would have awarded a larger or smaller sum than that awarded. That said, I find no reason to interfere at all with the ruling of the taxing officer.



14. Having so found, it follows that the application filed by the advocate dated 7<sup>th</sup> July 2023 in which they seek to have judgment entered in the certificate of taxation dated 31<sup>st</sup> March 2023 arising from the taxation ruling of 23<sup>rd</sup> February 2023 succeeds.

**Disposition**

- a. In conclusion, the reference application dated 8<sup>th</sup> March 2023 is dismissed with costs to the advocate.
- b. The application dated 7<sup>th</sup> July 2023 is allowed and consequently judgment is hereby entered for P.I Samba & Co in terms of the Certificate of Taxation dated 28th February, 2023 for the amount of Kshs. 617,143.20 with interest at 14% p.a from the date of the service of the Bill on 25th September, 2020 until payment in full.
- c. Leave is granted for a decree to be extracted and drawn in terms of the taxed costs and interest.

**DATED, SIGNED AND DELIVERED IN NAIROBI**

**THIS 7TH DAY OF JUNE 2024.**

**F. MUGAMBI**

**JUDGE**

