



**Githogori and Harrison Associates Advocates LLP v Mbugua (Environment & Land
Miscellaneous Case E018 of 2024) [2025] KEELC 3646 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3646 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE E018 OF 2024**

A OMBWAYO, J

MAY 9, 2025

BETWEEN

GITHOGORI AND HARRISON ASSOCIATES ADVOCATES LLP . APPLICANT

AND

PIUS MBUGUA RESPONDENT

RULING

Brief Facts

1. The Applicant filed the instant application dated 14th February, 2025 seeking the following orders:
 1. That the court be pleased to enter judgment for Kshs. 3,710,630/= against the Respondent in terms of the Certificate of Taxation issued on 26th September, 2024 in the High Court of Kenya at Nakuru Miscellaneous Application No. E018 of 2024 together with interest at the rate of 14% per annum from the date of taxation until payment in full.
 2. That the Certificate of Taxation dated 26th September, 2024 be hereby adopted and issued as a decree of this Honorable Court.
 3. That the costs of this application be borne by the Respondent.
2. The Application was based on grounds set out and supported by the Affidavit of Harrison Musyoka Lusyola sworn on 14th February, 2025. He stated that this court in Miscellaneous Application No. E018 of 2024 taxed the Bill of Costs dated 30th April, 2024 against the Respondent on 26th September, 2024 in the sum of Kshs. 3,710,630/=. He further stated that upon taxation, the Applicant was issued with Certificate of Taxation dated 26th September, 2024. That no orders have been issued varying or setting aside the said ruling. He stated that a judgment and decree of the taxed costs was necessary before the same could be realized through execution.



Response

3. The Respondent filed his replying affidavit sworn on 17th March, 2025 where he averred that the taxing master Hon. Priscah Nyotah delivered her ruling on the Advocate Client Bill of Costs dated 30th April, 2024 on 26th September, 2024 in favour of the Applicant. He averred that the Certificate of Costs dated 26th September, 2024 was issued. He further averred that the Bill of Costs was taxed at Kshs. 3,710,630.68/= and that by the time the ruling was delivered, he had paid Kshs. 4,190,000/= being legal fees to be provided but was never completed. He averred that the taxing master's tabulation at paragraph 42 of the ruling did not acknowledge the said amount paid by the Respondent to the Applicant. He went on to aver that the said amount was never contested but was acknowledged by the taxing master under paragraph 5 when discussing the Deposit Request Fee Note. He also averred that there was an overpayment of Kshs. 479,369.32/= made to the Applicant. He further averred that he instructed his advocate to recover the sum from the Applicant vide a demand letter dated 3rd October, 2024. That the Applicant had lodged a reference vide Nakuru Misc ELC E045 of 2024 that sought setting aside of the taxation assessment. That this was on the basis that it was excessively low and was to be submitted for re-assessment before a different taxing master. He averred that on 13th February, 2025 the reference was struck out for been filed outside the statutory timeline. He went on to aver that the Applicant had been paid in full for the uncompleted instructions even before assessment by the taxing master. He averred that the assessment revealed the full scope of work done by the Applicant for a matter that barely made it to pre-trial. He added that it also revealed the overpayment of the instruction fees had been taxed at Kshs. 2,000,000/=. He averred that the Applicant has since harassed him claiming the fees in the sum of Kshs. 264,754,581.84/= which amount exceeded the purchase price of the suit properties. He further averred that the application has since been overtaken by events as the decretal sum was already paid in full and even in surplus. He averred that the Applicant is using clever efforts to attain unjust enrichment. He urged the court to strike out the application for being an abuse of the court process or alternatively dismiss the application and make an order for refund of the surplus amount.

Submissions

4. Counsel for the Applicant filed his submissions dated 11th April, 2025 where he identified two issues for determination. The first issue was whether the issue of payment of the alleged sum of Kshs. 4,190,000/= was addressed by the taxing master and whether this court has jurisdiction to interfere with the Certificate of Costs in absence of a reference by the client. He submits that the assessment under paragraph 7 of the Respondent's replying affidavit challenged the correctness of the taxing master's decision thus inviting this court to review the Certificate of Costs on the basis of an alleged error or omission. He further submits that the Respondent is indirectly requesting the court to review the taxing master's decision as provided under Rule 11 of the Advocates Remuneration Order. He relied on the cases of Ahmednasir, Abdikadir & Co. Advocates V National Bank of Kenya Ltd [2006] KEHC 940 (KLR). It was his submission that the alleged payment was in fact raised before the taxing master in the Respondent's application dated 28th May, 2024. He also submits that the taxing master was aware of the said allegation but found the claim unsubstantiated and taxed the instruction fees at Kshs. 2,000,000/= and no reference has since been filed against it. He further submits that this court lacked the jurisdiction to interfere with the decision of the taxing master on the Certificate of Costs issued.
5. The second issue was whether the threshold for issuance of judgment under Section 51 of the Advocates Act has been met. He relied on Section 51(2) of the Advocates Act and the case in Otieno Ragot & Co. Advocates V Kenindia Assurance Co. Ltd [2023] KECA 1398 (KLR). It was his submission that



judgment may be entered under the said section without filing of a substantive suit provided that the Certificate of Costs was not challenged. He further submits that in the absence of such a reference, the Certificate of Costs was conclusive and binding. Counsel cited the case of Kipkorir, Titoo & Kiara Advocates V Deposit Protection Fund Board [2005] eKLR.

6. On whether the advocate was entitled to interest, it was his submission that once the Certificate of Costs was issued, interest was payable from the date of taxation unless the court directed otherwise. He relied on the case of Ochieng, Onyango, Kibet & Ohaga Advocates V Kenya Power and Lighting Co. Ltd [2005] eKLR and the case of Wambugu & Co. Advocates V East African Breweries Ltd [2020] eKLR. He submits that the Applicant sought for interest at 14% per annum to compensate for the delayed remittance of the professional fees.
7. Counsel for the Respondent filed his skeleton submissions dated 25th March, 2025. It was his submission that from the taxing master's own calculation and final tabulation at paragraph 42 of the ruling, the Applicant by the time the Bill was rendered had been paid by the client a surplus amount of Kshs. 479,362.32/-. He submits that the taxing master failed to tax off the acknowledged amount of Kshs. 4,190,000/- paid by the client to the advocate which amount was uncontested and acknowledged by the Deputy Registrar at paragraph 5 of the Ruling when discussing the Deposit Request Fee Note. He went on to submit that failure to tax off the deposit by the client was an error on the face of the record which at the same time amounted to a serious error in principle that would allow this court to interfere with and correct. He relied on the case of Kenya Airports Authority V Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44 (KLR). It was his submission that the present application was stale as it was made in subterfuge and only an afterthought upon receipt of the demand by the Respondent to be refunded the surplus fees paid to the Applicant and in order to circumvent the client's demand.
8. He submits that the Applicant's prayer to be awarded interest at the rate of 14% from date of the taxation on 26th September, 2024 was dead-on arrival as the surplus amount paid to him was settled as at 2nd December, 2020 almost four years prior to the taxation. He relied on Rule 7 of the Advocates (Remuneration) Order. He further submits that the purpose of entry of judgment based on a Certificate of Taxation of Costs under would be so as to allow the Applicant extract a decree and proceed with execution for the amount if it were not already settled. In the instant case the application has already been overtaken by events as the would be decretal amount has already been paid in full and even by surplus and that the proceedings now are an exercise in futility and an abuse of the court process as it would require the court to issue a stale decree which could not be enforced. He relied on the case of Eddy Nicholas O Orinda P/A One & Associates Advocates V Victoria Commercial Bank Limited [2020] KEHC 3440 (KLR) and Lubullellah & Associates Advocates V N K Brothers Limited [2014] eKLR.
9. He further relied on the case of Ratemo Oira & Co Advocates v Magereza Sacco Society Ltd, Civil Appeal No 75 of 2018; [2019] eKLR and submits that the court must be extremely vigilant and careful in the instant case to discourage the Applicant and indeed any other Advocates or any other party in any other suit from misusing the court process and taxation as a means of unjust enrichment.
10. In conclusion, it was his submission that Applicant came to court with unclean hands and is undeserving of being entertained by this court which is a court of equity and must administer justice and equity to both parties herein by bringing this dispute to an end.



Analysis and Determination

11. This court has carefully considered the application and the main issue for determination whether the application is merited. It is not in dispute that a certificate of taxation was issued on 26th September, 2024. The Applicant now seeks for judgment to be entered as per the Certificate of Taxation. Section 51[2] of the *Advocates Act* provides as follows:
 - “(1) Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
 - (2) 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.”
12. It is trite law that an Applicant desirous to procure judgment in terms of the certificate of taxation is obligated to satisfy the court on two conditions. Firstly, an Applicant must satisfy the court that there is in existence a certificate of taxation which has become final in all respects. The second condition that must be satisfied by an Applicant relates to proof that there is no dispute as pertains to retainer.
13. It is noteworthy that the certificate of taxation duly issued by the taxing officer was not in contest. The Respondent filed a notice of objection of the taxing officer decision on 15th October, 2024 which was filed beyond the 14-day statutory period under Rule 11 of the Advocates Remuneration Order and the same was struck out having been filed out of time. It is this court’s view that there be no pending reference in accordance with the provisions of Rule 11 of the Advocates Remuneration Order, the certificate of taxation issued by the taxing officer has not been impugned. In view of the same, the certificate of taxation is final in all respects and thus the Applicant has complied with the first condition.
14. On the second condition of a retainer, it is not in dispute that the Respondent engaged the legal professional services of the Applicant before he engaged another advocate who later took up the matter. The Respondent contends that he made an overpayment of Kshs. 479,369.32/= being professional fees to the Applicant for work that was incomplete. I have perused the taxing officer’s ruling and it is a fact that the issue of overpayment did not form part of her ruling which this court shall not belabor into. It is this court’s view that it was not in contention that there existed a retainer by virtue of the advocate client relationship between the Applicant and the Respondent. I thus find that the Applicant has equally met and satisfied the second limb.
15. In the circumstance, it is my considered view that the Applicant has met and satisfied the twin ingredients that underpin the provisions of Section 51[2] of the *Advocates Act*. The Applicant also sought for interests at 14% per annum from the date of taxation of the Advocate Client bill of Costs. Rule 7 of the Advocates Remuneration Order provides for the charging of interests as follows: “An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”
16. Consequently, the application dated 14th February, 2025 be and is hereby allowed in the following terms:
 - a. Judgment be and is hereby entered in terms of the Certificate of Taxation issued on the 26th September, 2024.



- b. The sum of Kshs. 3,710,630/= shall attract interest at 14% from 26th October, 2024 until payment in full.

It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2025-05-09 14:26:13

Doc IDENTITY: 3064639214839841552719595610 Tracking Number: OOB SZ22025

