



**Manguo Development Co Ltd & 7 others v Osamba Otieno &  
Company Advocates (Miscellaneous Civil Application E005 of 2023)  
[2023] KEHC 17844 (KLR) (Commercial and Tax) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17844 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E005 OF 2023**

**JWW MONG'ARE, J**

**MAY 12, 2023**

**BETWEEN**

**MANGUO DEVELOPMENT CO LTD ..... 1<sup>ST</sup> APPLICANT  
CHARLES KARANJA KAHAHIU ..... 2<sup>ND</sup> APPLICANT  
ANNE WAIRMU WANYEKI ..... 3<sup>RD</sup> APPLICANT  
DAVID KABUBII KURIA ..... 4<sup>TH</sup> APPLICANT  
SHADRACK THUKU KURIA ..... 5<sup>TH</sup> APPLICANT  
ELIZABETH WAMBUI KURIA ..... 6<sup>TH</sup> APPLICANT  
PINNACLE PROJECTS LIMITED ..... 7<sup>TH</sup> APPLICANT  
WINLOUKE PROPERTIES LIMITED ..... 8<sup>TH</sup> APPLICANT**

**AND**

**OSAMBA OTIENO & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. On January 23, 2023 the Applicant moved the court through a reference application seeking the following orders;
  - a. That there be a stay of execution of the decree of this court dated November 14, 2022 and Certificate of Taxation dated August 24, 2022 certifying costs due to the Respondent from the Applicants at Kshs 24,912,441.86/- pending the outcome of this motion.



- b. That the Certificate of Taxation dated August 24, 2022 be set aside, and the original bill of costs be referred for taxation afresh before a different taxing master.
  - c. That costs of this application be provided for.
2. The application is supported on the grounds set on its face and the supporting affidavit sworn on January 4, 2023 by David Kabubii Kuria, the 4<sup>th</sup> Defendant in the matter. The application is opposed and the Respondents have raised a notice of preliminary objection dated January 30, 2023 and replying affidavit sworn by Richard Osamba Otieno on January 30, 2023.
3. The Applicants are seeking to set aside the Certificate of Taxation granted on December 19, 2022 taxing the Advocate-Client Bill in Misc Cause No E809 of 2021- Osamba Otieno & Co Advocates v Manguo Development Co LTD & others at the sum of Kshs 24,912,441.86/-. The Applicant has alleged that the taxed amount was high and excessive and premised on the wrong parameters. That the Advocate only handled for the client preliminary issues in HCC Civil Case No 6 of 2021- Manguo Development Limited and 7 others vs I&M Bank Limited & Another and that the client has had to engage a different set of advocates to represent it in the said cause, which is still pending before the court.
4. That to allow the Certificate of Taxation to stand would visit an injustice to the Applicants as the taxed amount is way beyond their means and premised on the wrong grounds. That the Honourable taxing master based the value of a loan facility which was not disbursed in full and that the value of the subject matter as it stands is debatable and unascertainable.
5. That the taxation of the Advocate-Client Bill was done prematurely before the Advocate-Client relationship was terminated. The bill of costs, according to the applicants, should have done on a quantum meruit basis considering that the Respondent having abandoned the suit for the Applicants, the Applicants were forced to engage a different set of lawyers to represent them and hence an order to pay the Respondent full fees as taxed will expose them to two bills from two sets of advocates for the same case, which will greatly prejudice the Applicants.
6. The Applicant stated that they had entered into a retainer agreement with the Respondents and the same should have been considered as being binding upon the parties and enforced instead of the Bill being taxed. The taxing master made an error of principle in taxing the bill without considering all the material before her and the professional legal services received by the Applicants.
7. In urging the court to vacate the said ruling, the Applicants relied on several decided cases to support their arguments.
8. The Respondent opposed the application and filed a notice of preliminary objection together with a replying affidavit sworn by Richard Osamba Otieno, the Advocate. The Respondent argued that the application was fatally defective for failure to comply with the Advocates Remuneration order in that the reference was not brought within 14 days from the date of grant of leave by the court, since the same had not been filed within 14 days from the date of the decision as per the requirements of the law. Secondly, the Applicants did not attach to this application the itemized Bill of costs to which they consider improperly taxed and neither did they take issue with any issue in the said bill. Subsequently, the court is being invited to consider a general challenge which is not how a proper reference should be.
9. The Respondent stated that the taxed bill was done in accordance with the Advocates Remuneration Order and that not only did the Applicants have notice of the same but had appointed another firm of advocate to represent them. That the value of the subject matter in the primary suit, being HCCOMM No 6 of 2019- was the sum of Kshs.922,179,764.98/- and hence the taxed amount, in their view was justifiable. The Respondent further states that there is no law that prohibits an advocate from taxing



his bill once the advocate-client relationship has ceased to exist and in this particular case, there was no retainer agreement on fees or at all as alleged.

10. Further and in addition to the above averments, the Respondent urged the court, if it is so minded to allow the application to order that the full decretal amount be deposited in court or a bank guarantee on its payment to protect the Respondent, since judging by the violence reception accorded to the auctioneer by the Applicants, the Applicants are likely to dispose of the only known assets of the 1<sup>st</sup> Applicant to frustrate the realization of the fruits of his judgment.
11. The Respondent however urged the court to find that the application was unmerited and to dismiss the same and allow the advocate to realize the fruits of the judgment.

#### **Analysis and Determination:-**

12. I have considered the Applicants application and the pleadings and submissions filed therein as well as the Respondents' pleadings and submissions and I note that there indeed existed an advocate-client relationship between the parties herein in HCCCOMM No 6 of 2019- Manguo Development Ltd & 7 others vs. I&M bank Limited & another, the primary suit. That at one point at the commencement of the primary suit, the Respondent was the advocate for the Applicants in the primary suit.
13. I note from the submission by the parties the issue that arise for determination "whether the application filed herein is a reference as envisioned by the Advocates Remuneration Order". The [Advocates Remuneration Order](#) Section 11(1) provides as follows; "Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects." Further in Section 11 (4) the court has leave to expand the time beyond the 14 days above as it provides as follows;

"The High Court shall have power in its discretion by order to enlarge the time fixed by Subparagraph (1) or Subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired".
14. From the foregoing, I note that the reference before me was brought with leave of the court and therefore is properly before the court for determination as a reference.
15. However, as per Rule 11 (1) of the [Advocates Remuneration Order](#), the reference as filed does not set out the items in the Advocate-Client Bill of costs to which the applicants object. Instead, there is a general allegation that the taxed bill is excessive taking into consideration the scope of work undertaken by the advocate and the fact that the primary suit is still before court and there is no determinate value set by the court as the value of subject matter. Further, the applicants allege that they were not afforded an opportunity to challenge the Bill of Costs before the taxing master and that despite having filed objections to the Bill, the taxing master did not consider the same in arriving at a decision on taxed costs.
16. In considering this matter I am guided by the tenets of the [Constitution](#) especially as regards access to justice under Article 50 therein which provides as follows; "(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body." While balancing the rights of the Applicants I must also consider the legitimate expectations of the Respondent who is not any more engaged in the primary suit as counsel for the Applicant, and cannot be therefore expected to sit and wait out the hearing of the suit to determine in full to be paid his legal fees for work done.



17. I have considered the submissions by the parties, and I also note that the Bill was taxed at Kshs.24,912,441.86/-, and therefore it is indeed a substantial amount. I find therefore the Applicant raises valid issues and that they should be accorded an opportunity to make presentation before the taxing master and challenge the Bill. Having found so however I also note that the Respondent has legitimate expectation to be paid his fees for services rendered to the Applicants in the primary suit. In allowing the application before me I direct that the Applicants do deposit with the Courts the sum of Kshs.5,000,000/- as security for costs as they wait a fresh taxation of the Advocate-Client Bill of costs as filed in Misc. Cause No E809 of 2021.
18. In conclusion therefore I find and hold that the above Advocate-Client Bill of costs be placed before a different taxing master for determination. The same shall be done once the sum of Kshs.5,000,000/- has been deposited within 30 days with the courts as security for costs in the matter.
19. The costs of this reference shall be borne by the Applicants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY 2023.**

.....

**J. W. W. MONG'ARE**

**JUDGE**

**In the Presence of:-**

Mr. Osamba for the Respondent.

N/A for the Applicant.

**Sylvia- Court Assistant**

