



**Ameli Inyangu & Partner Advocates v Saleh & another (Miscellaneous Application 63 of 2017) [2023] KEHC 21078 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21078 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION 63 OF 2017  
DKN MAGARE, J  
JULY 3, 2023**

**BETWEEN**

**AMELI INYANGU & PARTNER ADVOCATES ..... APPLICANT**

**AND**

**ABDULGADER SHARIFF SALEH ..... 1<sup>ST</sup> RESPONDENT**

**JAMAL SHARIFF SWALEH T/A JINGO TOURS & SAFARIS  
LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter first came before me on 15/3/2023 seeking the following orders: -
  - a. That this application be certified as urgent, and service be dispensed with and heard ex-parte in the first instance for reasons of its urgency.
  - b. That the Honourable Court be pleased to issue an order of temporary stay of execution by way of warrants dated 13/3/2023 and decree issued on 9/02/2021 and all the consequential orders thereto pending the hearing and determination of this application inter partes.
  - c. That this Honourable Court be pleased to set aside, discharge and vary the order extracted on January 19, 2022 for being inconsistent with orders issued on 8/3/2019.
  - d. That costs of this application be provided for.
2. I issued orders in terms of prayer 2 and direction on disposing the application.
3. The Court directed in the morning that the certificate of costs. I see the order of Justice PJO Otieno that costs were ordered to be in the cause. I do not know who directed that the costs be paid. It is not on the record.



4. I have also seen a taxation of the bill of costs assessed by the court. There has been no direction on what “in the cause” means. Before such direction, I direct the taxation shall stand set aside. The matter remaining for taxation is the bill of costs dated 15/3/2023. Upon its taxation, then and only then will be client’s costs be taxed for the minimal attendance to set aside the taxation. No instructions fees are payable in respect to an application to set aside taxation.
5. The client had not been served. They had no instructions to defend. Therefore, parties are at liberty to agree on the costs for the client to set aside the taxation.
6. The client shall pay the auctioneer for taxing and executing the bill when the costs were in the cause to enable taxation be conducted in the usual manner.
7. There have been too many applications in this matter. I wish that the bill of costs dated 3/3/2017 to proceed without let or hindrance. Upon it being taxed, the client to tax within 15 days thereafter their costs for the application, which shall be a set off against allowed costs.
8. In other words, unless the bill of costs for the Advocate is found to be less than the client’s bill of costs for the application to set aside, there will be no execution against the advocate.
9. I therefore direct the Deputy Registrar, to proceed appropriately, recalling that there are no instructions fees for advocates defending in taxation or applying to set aside. Costs will relate to attendance.
10. It is important to remembered caveat issued by Justice S GAtembu Kairu, FCIArb in [Otieno, Ragot & Company Advocates v Kenya Airports Authority](#) [2021] eKLR as doth: -

“ 16. The circumstances in which the High Court may interfere with the exercise of discretion by a taxing officer in a reference are limited. The principles are captured in many decisions of this Court going back many years. See for instance Arthur Vs Nyeri Electricity Undertaking [1961] EA 492 and Premchand Raichand Limited & another vs. Quarry Services of East Africa Limited and another [1972] EA 162. In the latter case, the Court stated that:  
“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other”.

### **Determination**

11. The warrants issued herein are hereby vacated for being mischievous. The taxation of the client’s costs before the advocates costs was equally in defiance of the order of 8/3/2019. Consequent it is set aside, *ex debit justitiae*.
12. The bill of costs dated 3/3/2017 shall be taxed forthwith, and there after the client’s bill be fixed for taxation 15 days thereafter, bearing in mind that there are no instructions for defending a taxation.
13. The clients to bear the auctioneers costs and costs of 30,000/= for this application payable within 45 days.



14. The bill of costs dated 3/3/2017 do proceed without let of hindrance for taxation before the Deputy Registrar.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 3<sup>RD</sup> DAY OF JULY, 2023.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of: -**

No appearance for parties

Court Assistant - Brian

M.D. KIZITO, J.

