



**Mukumi Mwangi & Co Advocates v Chege (Miscellaneous
Application E201 of 2023 & 905 of 2021 (Consolidated))
[2023] KEHC 22986 (KLR) (Commercial and Tax) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22986 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E201 OF 2023 & 905 OF 2021 (CONSOLIDATED)
JWW MONG'ARE, J
SEPTEMBER 25, 2023**

BETWEEN

MUKUMI MWANGI & CO ADVOCATES ADVOCATE

AND

ANNE NJERI CHEGE CLIENT

RULING

Introduction and Background

1. The ruling herein determines the two separate applications before this court, one filed by the Client in Misc. No. E201 of 2023 while the second one is filed by the Advocate in Misc. No. E905 of 2021. On 19/1/2023 the Advocate filed her Application seeking Entry of Judgment of the taxed certificate of costs for the sum of Kshs. 136,925/- to allow her to proceed with execution of the decree.
2. The Respondent did not file a response to the application for entry of judgment of the taxed costs. Instead, the Respondent filed a Reference challenging the taxation and the Award of VAT on the taxed costs. In the Reference filed by the Client in Misc No. E201 of 2023, the application is seeking to overturn the ruling on the taxation and arguing that the Taxing Master and the client that the Taxing Master in failing to consider that the parties had hitherto agreed on the amount of fees to be charged for the transaction at Kshs.80,000/-, the Taxing Master acted in error of principle and therefore the taxed costs should be set aside and or vacated. The client also objects to the item of VAT assessed at Kshs.22,500/- in the said taxation.
3. The Reference was opposed by the Advocate who filed a Notice of Preliminary Objection dated 19/1/2023 arguing that the Reference application was an abuse of the court process and was incapable of sustaining the orders sought. The Advocate argued that the client had in Misc. 905 of 2021 filed



an application seeking to review the taxation and the same had been dismissed by the court and since no appeal to the dismissal order was lodged, the current Reference was indeed an abuse of the Court process. The Advocate urged the Court to dismiss the application and allow the Reference for entry of judgement to allow the Advocate obtain a decree for execution.

Analysis and Determination

4. Having carefully considered the two applications before me I have identified one issue for determination, to wit, “whether the Application for Entry of Judgment by the Advocate is merited in view of the Reference Application filed by the Client”. From onset I note that it is not disputed that the Advocate indeed represented the Client in a land sale transaction for LR 1316/270 for Kshs. 7,875,000/= and as a result, the Advocate filed a Bill of Costs pursuant to the same and the same was taxed at the sum of Kshs.136,925/- plus VAT assessed at Kshs.22,500/-. The bone of contention is whether the court should consider the purported agreement on fees at Kshs.80,000/- as alleged by the client and set aside the taxation. I note that the client did not file any response to the Application for entry of Judgment.
5. Section 51(2) of the *Advocates Act* which provides:-

“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”.
6. The Advocate in the Preliminary Objection raised in opposition to the Reference Application allege a similar application was filed by the client application on July 18, 2022 seeking review of the taxing master decision of June 28, 2022 and the same was dismissed for lack of merit. This allegation was not controverted by the client. Further, despite the submissions by the client that fees had been agreed at Kshs 80,000/- no material or evidence was placed before the court to confirm that the Client had made any attempts to settle the same, and therefore the statement from the Advocate that the said fees are long overdue and have been outstanding for 5 years must be taken into consideration in determining the matters before the court.
7. The Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR the Court of Appeal distilled the principle as follows:-

On a Reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs. In *Arthur v Nyeri Electricity Undertaking* [1961] EA 497, the predecessor of this Court said at page 492 paragraph I: “where there has been an error in principle the court will interfere; but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will interfere only in exceptional cases”.
8. Flowing from the above decisions of the court and the available evidence that the Reference is not sustainable, a similar one having been dismissed by the court in a previous application, the said Reference application is not only frivolous but also an abuse of the court process. The said Reference is struck out. The flip side is that the application for Entry of Judgment is unopposed and the same is allowed with costs to the Advocate.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF
SEPTEMBER 2023

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J. W. W. MONG'ARE

JUDGE

In the Presence of:-

Ms. Mwangi for the Advocate/Respondent.

Mr. Maranga for the Client/Respondent.

Amos - Court Assistant

