



C Obiero & Associates Advocates v Nalwa (Commercial Miscellaneous Application E006 of 2024) [2024] KEHC 15775 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL MISCELLANEOUS APPLICATION E006 OF 2024
RE ABURILI, J
DECEMBER 5, 2024**

BETWEEN

C OBIERO & ASSOCIATES ADVOCATES APPLICANT

AND

DR WAFULA NALWA CLIENT

RULING

1. This ruling determines the advocate's application dated 26th September, 2024 seeking orders that the certificate of costs issued on 16th September, 2024 be converted into a judgment of this court and decree do issue in the taxed sum of Kshs 128,760, 276? However, the taxed costs are Kshs 128,760 not in millions as per the ground number b of the application. The applicant also prays that the interest accrued at court rates be paid until payment in full. The application is brought under the provisions of section 51 of the [Advocates Act](#).
2. The applicant deposes in the supporting affidavit that following the taxation of the advocate client bill of costs dated 8th March, 2024 on 16th September 2024, no reference has been filed and that neither has the certificate of taxation as a issued been set aside hence the prayers sought.
3. In the replying affidavit filed by the respondent client, he deposes in contention that immediately after the taxation, this application for judgment was expeditiously filed before time for appeal which is 30 days had elapsed; that the respondent client does not owe the advocate any sums as shown by Mpesa statements annexed.
4. The application was argued orally on 21/11/2024 with Mr. Obiero reiterating his depositions and grounds and the respondent's Counsel Mr. Magesa submitting replying on the replying affidavit that his client had paid all the fees due.



5. In a rejoinder, Mr Obiero submitted that he will give credit to the post taxation payments during execution but that the alleged payments prior to taxation were considered by the taxing master in her ruling and dismissed.
6. I have considered the application, the response thereto and the submissions by both parties' counsel on record. I observe that in her taxation ruling of 16th September, 2024, the taxing master clearly stated as follows:

“Unfortunately, there is no proof of part payment of fees to the applicant by the respondent.”
7. With the above statement, and had the respondent been aggrieved by the pronouncement, nothing stopped him from approaching this Court under Paragraph 11 of the Advocates Remuneration Order to challenge the pronouncement. The taxing master having taxed the bill taking into account all matters in opposition including the allegation that the respondent client had paid and settled the claim but the taxing master finding no evidence to that effect, this court cannot be asked to revisit that matter in an application for adoption of the certificate of taxation as judgment of the court.
8. Accordingly, as there is no reference filed, and as no law bars the applicant from filing the application before the elapse of 30 days of taxation, these being special proceedings under the Advocates Remuneration Order where only a reference or serious point of law can change the certificate of taxation issued, I find the application by the advocate dated 26th September 2024 to be merited. I allow the application. I enter judgment for the advocate applicant in the taxed sum of Kshs 128, 760 with interest at court rates as prayed from the date of taxation until payment in full.
9. However, any payment made post taxation shall be taken into account and in the event of execution, the advocate applicant shall give credit for the same and exclude it from execution.
10. Decree to issue.
11. Each party to bear their own costs of the application.
12. Mention before the Deputy Registrar on 30/1/2025 to confirm settlement.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 5TH DAY OF DECEMBER, 2024

R.E. ABURILI

JUDGE

