



**Kasamani & Company Advocates v Piemo (Miscellaneous Civil Application E185 of 2023) [2024] KEHC 15711 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15711 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION E185 OF 2023  
RE ABURILI, J  
DECEMBER 5, 2024  
IN THE MATTER OF THE ADVOCATES ACT, CAP 16 OF THE LAWS OF KENYA  
AND  
IN THE MATTER OF TAXATION OF ADVOCATES CLIENT  
BILL OF COSTS IN HC MISC E164 OF 2022 AT KISUMU  
BETWEEN  
KASAMANI & COMPANY ADVOCATES ..... ADVOCATE  
AND  
JOSHUA OUKO PIEMO ..... CLIENT**

**RULING**

1. This ruling determines the application dated 16<sup>th</sup> June, 2024 seeking orders for setting aside proceedings touching on the bill of costs that culminated in the issuance of certificate of costs dated 4<sup>th</sup> May, 2023 upon which judgment was entered for the advocate against the client and decree issued on 29<sup>th</sup> January 2024.
2. According to the client, the bill of costs was filed and taxed when there was still in place the client advocate relationship in the subject case where the advocate was representing the client. He asserted that the law bars an advocate from filing his bill of costs against a client before terminating the client advocate relationship and being discharged therefrom on account that there is likely to be a multiplicity of bills of costs against the client.
3. The advocate despite being served with the application, he did not file any replying affidavit or grounds of opposition was however, allowed to respond orally. He submitted that the party and party costs were taxed on merit and that the respondent client participated before the Deputy Registrar but that he only filed the application subject of this ruling when execution was set in motion to recover the taxed costs.



4. I have considered the application by the client. The advocate filed a bill of costs dated 21<sup>st</sup> October 2022 seeking for taxation and the Deputy Registrar of this court taxed the bill of costs on 4<sup>th</sup> may 2023 at kshs 205,812. The advocate filed the application under section 51 of the *Advocates Act* for conversion of the certificate of costs into judgment and decree, which application was allowed as there was no challenge to retainer or reference filed.
5. The advocate claims that he represented the client in Kisumu HCC 118 of 2008 on the client's instructions but that despite requests for fees payment, the client refused. This is as per the application and affidavit sworn by Vincent Mukoya Advocate sworn on 3<sup>rd</sup> October, 2023.
6. The client has not filed a reference but claims that the proceedings leading to the issuance of decree must be set aside because the advocate was still representing him when he filed and had his bill of costs taxed against the client.
7. I observe that when this court entered judgment for the advocate on the certificate of costs on 29<sup>th</sup> January 2024, it observed that the client had not been served but that what the advocate was seeking was for entry of judgment on a certificate of costs dated 4<sup>th</sup> may 2023 and that as there was no reference filed, the application was allowed.
8. According to the client, the advocate had not ceased acting for him in the suit while the advocate claims that he ceased acting for the client and that he had already obtained warrants of attachment and sale of the client's movable property hence he should be allowed to proceed. In an earlier application, Mr. Mukoya claimed that the ELC had discharged him in Homabay ELC 1 of 2023. However, the bill of costs is not in respect of ELC Homabay matter but Kisumu HCC 118 OF 2008.
9. The advocate did not provide any notice of cessation to act for the client in the aforementioned case or the client's notice of intention to act in person or notice of change of advocates filed by another advocate, removing him from the proceedings as counsel for the client.
10. What is the effect of an advocate filing a bill of costs against the client when the advocate is still acting for the party in those proceedings?
11. In the case of *Gichuki King'ara & Co. Advocates V. Mugoya Construction & Engineering Ltd* 2010 eKLR, the Court declined to allow an advocate present his Bill for taxation before the work he was retained to do is completed and stated that:-

“It is equally clear that all they are asking for is payment of the work done. Since the retainer lasts till the work is done, then the Respondent should patiently do the work to its completion and then tax the bill of costs. Their claim to be paid for the work done to date contradicts the principle that the retainer is one entire contract to be remunerated after completion, and amounts to seeking payment on a quantum meruit basis. To allow the taxation at this stage would result in allowing taxation at or even before the conclusion of the business for which the Respondents were retained. This would create a bad precedent whereby and Advocate could tax his bill at will before the business for which he was retained is concluded, and this could result to a multiplicity of taxations in the same retainer, which would be greatly prejudicial to the client.” [emphasis added]



12. Further in *Commercial Bank of Africa Vs. Lalji Karsan Rabadi & 2 others* (2012) eKLR Odunga J held:-

“The overriding objective, in my view, is tailored to enable the court deal with cases justly and includes allotting cases their appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.

The rationale for taxing the costs at the end of the trial is to avoid multiplicity of proceedings in form of taxation which may lend themselves to references. The Court ought to avoid the possibility of entertaining multiplicity of similar legal proceedings since such multiplicity has the effect of allotting a case more judicial time and resources at the expense of other cases.”

16. Paragraph 62 of the *Advocates (Remuneration) order* 2009 provides:-

“Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate’s bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.”

13. In this case, there is no evidence that the advocate had ceased to act for the client in the Parent case, which gave rise to the Advocate/Client Bill of Costs or that the matter had been concluded. This is because there is neither an order granting leave to the advocate to cease acting, nor is there evidence that another advocate had taken over in the Parent case or the client filing notice of intention to act in person.

14. For the above reasons, I find that the taxation of the advocate/ client bill of costs was irregular. Accordingly, the application dated 16/6/2024 by the client merited. I allow it and set aside all the proceedings giving rise to the taxation of advocate client bill of costs dated 21<sup>st</sup> October 2022 in this matter. I further set aside the certificate of costs dated 4<sup>th</sup> May 2023 as well as the order entering judgment for the advocate on the certificate of costs on 29<sup>th</sup> January, 2024. I further set aside the decree issued by this court and vacate the warrants of attachment and sale of the client’s movable property.

15. The advocate is however at liberty to file a fresh bill of costs that complies with the law as set out in this ruling.

16. I order that each party shall bear their own costs of the application and these proceedings.

17. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024**

**R.E. ABURILI**

**JUDGE**

