



**Mutai t/a Mutai Kiprotich & Company Advocates v Selim (Miscellaneous Civil Application E036 of 2024) [2024] KEHC 15479 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15479 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CIVIL APPLICATION E036 OF 2024  
JK SERGON, J  
DECEMBER 5, 2024**

**BETWEEN**

**JULIUS KIPROTICH MUTAI T/A MUTAI KIPROTICH & COMPANY  
ADVOCATES ..... APPLICANT**

**AND**

**SELINA CHEPKOECH SELIM ..... RESPONDENT**

**RULING**

1. The application combining up for hearing is a notice of motion dated 21st August, 2024 seeking the following orders;
  - (i) Spent
  - (ii) Spent
  - (iii) That this Honourable Court be pleased to set aside and/or revoke the taxing officer's decision and ruling dated 7th August, 2024.
  - (iv) That the Honourable Court be pleased to tax afresh the Bill of Costs dated 30th October, 2023.
  - (v) That in the alternative to prayer (iv) above, the Bill of Costs dated 30th October, 2023 be remitted to the taxing officer afresh.
  - (v) That the costs of this application be in the cause.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Selina Chepkoech Selim the Applicant herein who is conversant with the facts and circumstances of this matter, hence competent and authorized to swear the affidavit.



3. She avers that the taxing officer delivered her ruling on 7th August, 2024 and that the bill was taxed at Kshs. 878,843/=. She avers that the taxed costs are excessive and not commensurate with the work rendered by the Respondent herein.
4. She avers that she had paid the Respondents a sum of Kshs. 300,000/= of the work done and therefore the taxed costs were not justified.
5. She avers that she instructed her current advocates to peruse the file where the record shows that the Respondent took over the matter and filed a notice of change of advocates in the year 2019 and subsequently filed amended P & A 5 dated 16th June, 2022 and nothing else was done by the Respondent.
6. She avers that the taxing master failed to apply the correct principles on assessment of the instruction fees to include work done and time expended by the advocate, complexity of the matter and documents filed by the advocate before taxing the bill.
7. She avers that there is looming execution against the Applicant for the taxed amount and it is therefore in the interest of justice that the instant application be allowed to obviate a miscarriage of justice and curb unjust enrichment by the Respondent.
8. Julius Kiprotich Mutai the Respondent herein filed a replying affidavit in response to the application.
9. He avers that the Applicant retained and/or instructed the Respondent on 29th November, 2019 with a view of representing her on High Court Succession Cause No. 8 of 203 in the matter of Kimutai A. Selim alias Kimutai Arap Selim (Deceased).
10. He avers that pursuant to the instructions received from the Applicant, the Respondent proceeded to render professional legal representation to wit legal research, drafting and filing of the necessary applications, pleadings and documents.
11. He avers that he took instructions and dutifully represented the Applicant with the legitimate expectation that he will be paid for the legal services rendered whether or not the advocate/client relationship is severed.
12. He avers that at the time of instructions the Applicant agreed with the Respondent that she would pay the professional legal fees upon the Respondent preparing a bill of costs and serving it upon her.
13. He avers that with a great deal of industry and time, the Respondent zealously represented the Applicant until 2nd August, 2023 when a notice of change of advocates was lodged and served upon the Respondent.
14. He avers that pursuant to the parties agreement, the Respondent prepared and served an Advocate - Client Bill of Costs dated 30th October, 2023 for purpose for purposes of consideration and settlement by the Applicant.
15. He avers that the Applicant failed, neglected and/or otherwise refused to settle the Advocate - Client Bill of Costs served upon her which necessitated the filing of Kericho High Court Miscellaneous Application No. E006 of 2024 for purposes of taxation.
16. He avers that the taxing officer, the Deputy Registrar of the High Court Hon. Felistus Nekesa, upon considering submission by the parties delivered a well reasoned ruling on 7th August, 2024 taxing the bill of costs at Kshs. 878,843/=.



17. He avers that the costs awarded was commensurate with the work done and the taxing master rightfully exercised her discretion and gave reasons for an award of Kshs. 700,000/= as instruction fees stating that from the assets outlined, this was an important matter due to the vastness of the estate and there was an objection to the cause.
18. He avers that the averment in paragraph *para\_6 6* in the applicants supporting affidavit, notwithstanding, that she had paid Kshs. 300,000/= to the Respondent, the Respondent contended that the said amount is not backed by any evidence such as a receipt to demonstrate the said payment.
19. He avers that the reference application is an omnibus application, as it is not succinct as to the specific items contained in the Bill of Costs that are being contested by the Applicant as required by Rule 11 of the Advocates Remuneration Order, 2014.
20. He avers that on matters of quantum in taxation proceedings are matters purely within the province, competence and judicial discretion of the taxing officer and the courts will not lightly interfere with an award of quantum by the taxing officer, unless there was an error in principle or the discretion was improperly exercised, resulting in an injustice.
21. I have considered the application and replying affidavit by the parties and I find that the issue (s) for determination is whether to set aside and/or revoke the taxing officer's decision and ruling dated 7th August, 2024.
22. This court having considered the reference, finds that the matter was rightfully subjected to taxation, one one hand, the Applicant contended that she had paid the Respondent a sum of Kshs. 300,000/= of the work done and therefore the taxed costs were not justified. On the other hand, the Respondent contended that the said amount is not backed by any evidence such as a receipt to demonstrate the said payment. The Respondent maintained that he diligently represented the client in High Court Succession Cause No. 8 of 203 in the matter of Kimutai A. Selim alias Kimutai Arap Selim (Deceased) subsequently prepared an Advocate - Client Bill of Costs dated 30th October, 2023 for purpose for purposes of consideration and settlement by the Applicant. The Respondent contended that the Applicant failed, neglected and/or otherwise refused to settle the Advocate - Client Bill of Costs served upon her which necessitated the filing of Kericho High Court Miscellaneous Application No. E006 of 2024 for purposes of taxation. Having considered the record, it is the finding of this court that there being no validly binding agreement as contemplated by the law in section 45 of the *Advocates Act*, the Advocate was perfectly entitled to file his bill for taxation.
23. This court has considered the taxing officer's decision and ruling dated 7th August, 2024, and the reference at hand in respect to the instruction fees. Whereas the Applicant argued that the taxed costs are excessive and not commensurate with the work rendered by the Respondent. The Respondent argued he zealously represented his client and rendered professional legal services to wit legal research, drafting and filing of the necessary applications, pleadings and documents until he was served with a notice of change of advocates. It is the finding of this Court that the taxing master rightfully exercised her discretion, prepared a well reasoned ruling and gave reasons for an award of Kshs. 700,000/= as instruction fees stating that from the assets outlined, this was an important matter due to the vastness of the estate and that there was an objection to the cause. In *Joreth Ltd v Kigano & Associates [2002] 1 E.A. 92*, the Court observed as follows on taxing off instruction fees; "We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a Bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case), but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the



trial judge and all other relevant circumstances. It is not really in the province of a Judge to re-tax the bill. If the Judge comes to the conclusion that the taxing officer has erred in principle, he should refer the bill back for taxation by the same or another taxing officer with appropriate directions on how it should be done. The Judge ought not to interfere with the assessment of costs by the Taxing Officer unless the officer has misdirected himself on a matter of principle. In principle the instruction fee is an independent and static item, is charged once only and is not affected or determined by the stage the suit has reached. The Taxing Officer whilst taxing his bill of costs is carrying out his functions as such only. He is an officer of the Superior court appointed to tax bills of costs.”

24. In *Alice Yano t/a Yano & Co. Advocates v Rebecca Nadupoi Supeyo & another* [2021] eKLR Mwita J. stated that; “It is a principle of law that a judge will not readily interfere with the decision of the taxing officer, and should only do so in very exceptional cases. The judge should only interfere where it is sufficiently demonstrated that the taxing officer erred in principle; an example is where the sum awarded is either inordinately high or low, taking into account the nature of the proceedings, to conclude that he acted on a wrong principle.”
25. Consequently, the notice of motion dated 21st August, 2024 lacks in merit, the same is hereby dismissed.
26. Each party to meet their own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF DECEMBER, 2024.**

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**J.K. SERGON**

**JUDGE**

In the Presence of :-

C/Assistant – Langat

Miss Njogu for Applicant

Evanson Kirui for Respondent

