



REPUBLIC OF KENYA



Kimani v Harry Karanja & Company Advocates (Environment and Land Miscellaneous Application E174 of 2023) [2025] KEELC 5970 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E174 OF 2023**

TW MURIGI, J

JUNE 25, 2025

BETWEEN

AUSTIN MAINA KIMANI CLIENT

AND

HARRY KARANJA & COMPANY ADVOCATES ADVOCATE

*(Being a Reference from the Ruling of Honourable Judith Omollo,
Senior Deputy Registrar delivered on 29th October 2024 in Harry
Karanja & Company Advocates versus Austin Maina Kimani)*

RULING

1. Before me for determination is the Chamber Summons dated 11th November 2024 brought under Rule 11 (2) of the Advocates Remuneration Order, Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 50 Rule 6 of the Civil Procedure Rules in which the Applicant seeks the following orders:-
 - i. Spent.
 - ii. That pending the hearing and determination of this Reference, the Honourable court be pleased to order a stay of execution of the Ruling delivered by Honourable Senior Deputy Registrar Judith Omollo on 29th October 2024 and the certificate of taxation arising therefrom.
 - iii. That this Honourable court be pleased to vacate or set aside in its entirety the Ruling of Honourable Senior Deputy Registrar Judith Omollo on 29th October 2024 in respect to the advocate- client bill of costs dated 22nd June 2023 filed in Milimani ELC MISC E174 of 2023.
 - iv. That the Honourable court be pleased to find and declare that there was no Retainer Agreement between the client and the advocate and that the client did not instruct the advocate to act for him in ELC Case Number E076 of 2022; Mary Wacuka Kimani versus Austin Maina Kimani & 2 others.



- v. That a declaration be made that the amount awarded on every item in the Ruling by the Taxing Officer delivered on 29th October 2024 is manifestly excessive.
 - vi. That the costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of the Applicant sworn on even date.

The Applicant's Case

3. The Applicant averred that Respondent filed a Bill costs dated 22nd June 2023 and in response he filed a replying affidavit, grounds of opposition Preliminary Objection and a Notice to produce.
4. He further averred that the Honourable Deputy Registrar did not consider:
 - a. the crucial observation made by Mwangi J in his Ruling delivered on 13th May 2024 on his father's active involvement in the case.
 - b. his pleadings and evidence pertaining the subject of the retainer.
 - c. the fact that he is a university student who at the time of the alleged instructions was going through mental issues and could not have instructed or paid the Advocate.
 - d. that the matter was settled by consent.
5. He deposed that the award of the Taxing Officer including the instruction fee was based on a non-existent subject matter that was neither pleaded nor proved which matter was settled by consent and was never set down for hearing.
6. The Applicant is apprehensive that if the court does not intervene, the advocates will proceed with the execution as they have already issued an order demanding payment of the taxed amount.

The Respondent's Case

7. The advocates/Respondent opposed the application through the replying affidavit of Harry Karanja dated 11th February 2025.
8. The deponent averred that the Applicant's assertion that he did not instruct the firm of Harry Karanja & Company Advocates was a weak attempt to avoid paying costs for legal services rendered.
9. He reiterated the Taxing Officer's analysis in determining that the client had retained the Respondent and added that the Applicant had a duty to pay the advocates costs. Accordingly, the deponent asserted that the application is frivolous, vexatious and devoid of merit and is aimed at circumventing payment of costs.
10. He asserted that a Retainer Agreement or instruction note was not the only proof that an advocate had been retained. In this regard he relied on his Affidavit dated 21st November 2023 and the annexures therein.
11. He deposed that the averment made by the client that the Taxing Officer did not consider that he was a student could not fly as he is a co owner of the suit property. According to the deponent, the reference is an attempt by the Applicant to re-litigate his earlier application.
12. He further deposed that the award of the Taxing Officer was sound as she considered that the subject matter was high and that a lot of work had gone into legal representation.



13. The reference was canvassed by way of written submissions.

The Applicant's Submissions

14. The Applicant filed his submissions dated 7th March 2025. On his behalf, Counsel outlined the following issues for the court's determination:-
- a)) Whether the Deputy Registrar erred in finding that there existed a retainer between the Applicant and the Respondent.
 - b) Whether the ruling of the Deputy Registrar should be set aside.
15. Counsel submitted that on 6th October 2022, the Applicant was informed by his father Andrew Kimani Ngángá about a consent issued by the court in Nairobi ELC Case No. E076 of 2022. That during the conversation the Applicant's father informed the Applicant that he had engaged an Advocate to challenge the consent order and advised the Applicant to visit the Advocate to sign the necessary documents for filing in court. That the Applicant's father assured him that he would cater for the costs. That later on the Applicant and his father met the Respondent who drafted an affidavit which was signed by the Applicant and his father. That subsequently the Applicant prepared and executed a power of attorney which his father and the Respondent used to collect income on his behalf without his knowledge. Counsel submitted that throughout the entire process, the Applicant never paid any legal or court fees.
16. Counsel submitted that the Respondent and the Applicant's father are using the Applicant to exploit his mother through the bill of costs. From the foregoing, Counsel submitted that there was no retainer between the Applicant and the Respondent. To buttress this point, Counsel relied on the case of *Sukari Sugar Industries Ltd v Ochola Peter Ariyo (2021) eKLR*.
17. Counsel further submitted that there was no retainer agreement between the Applicant and the Respondent as the Respondent failed to provide an instruction note or letter from the Applicant requesting for his services. To this end, Counsel relied on the case of *Omulele & Tollo Advocates v Mount Holdings Ltd C.A 75 of 2015* and on the case of *Ochieng Onyango, Kibet & Ohaga Advocates v Akiba Bank Limited (2007) eKLR*.
18. Counsel further submitted that the Deputy Registrar erred in concluding that the Applicant never raised the issue of the Respondent lacking instructions as he stated in his affidavits that he uncovered the scheme orchestrated by the Respondent and his father which prompted him to appoint a new firm of advocates to represent him.
19. Concluding his submissions, Counsel submitted that the Applicant never instructed the Respondent and added that the instructions came from his father who should bear the responsibility for any legal fees arising from ELC Case No. E076 of 2022.

The Respondent's Submissions

20. The Respondent filed its submissions dated 22nd March 2025. On behalf of the Respondent, Counsel submitted that the Deputy Registrar rightly determined the existence of a valid retainer between the Respondent and the Applicant.
21. Counsel further submitted that the establishment of a retainer is a factual matter and added that the evidence present confirms that the Applicant engaged and benefited from the Respondent's legal services. It was submitted that the taxing officer found that arising from the conduct of the parties a retainer existed. To this end, Counsel relied on the case of *Ochieng Onyango, Kibet & Ohaga Advocates*



v Akiba Bank Limited (20070 eKLR. Counsel further submitted that the Applicant's assertion that his father told him that he would settle the bills does not absolve him from responsibility as he is named as a party in ELC E076 of 2022 and he also a part owner of the suit property. Counsel submitted that the Applicant benefited directly from the legal services which included setting aside of a consent order and the management of the property worth Kshs. 250 million.

22. Counsel submitted that the Applicant's claim of financial incapacity is untenable as he owns property generating a monthly income of Kshs. 900,000/=.
23. Concluding his submissions, Counsel urged the court to dismiss the application with costs.

Analysis and Determination

24. Having considered the reference, the respective affidavits and the rival submissions the following issues fall for determination:-
 - a) whether there was an advocate client relationship between the parties herein.
 - b) Whether the ruling of the taxing officer should be set aside.
25. The Applicant faulted the taxing officer for holding that there existed an advocate client relationship between the parties herein. He vehemently denied having retained the Respondent to act on his behalf.
26. In the Blacks Law Dictionary, the word retainer is explained as follows:

“In the practice of law, when a client hires an attorney to represent him the client is said to have retained the attorney The act of employment is called the retainer. The agreement between the client and the attorney sets for the nature of services to be performed costs, and related matters...”The act of authorizing or employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client; Consequently, the giving of a retainer is equivalent to the making of a contract for the solicitor's employment.”
27. It is trite law that a retainer need not be in writing but the same could be implied from the conduct of the parties. The Applicant admitted that the Respondent rendered services including drafting of the consent and making appearances in E076 OF 2022. The Taxing Officer, found that the client had retained the services of the advocate as from 6th October 2022 to 25th May 2023 and that his name appeared as one of the parties to the suit. Further, the taxing officer concluded that there had been a retainer agreement and they could tax the advocate-client bill of costs. As rightly held by the Deputy Registrar the Applicant did not raise the issue of retainer during pendency of the proceedings.
28. Having scrutinised the entire record, it is the finding of this court that there was a retainer between the Applicant and the Respondent.
29. The Applicant is seeking to have the ruling of the taxing officer on the grounds that the award is manifestly excessive. Although the Applicant in his prayers urged the court to set aside the ruling of the taxing officer on the grounds that the amount awarded was manifestly excessive, it clear from his submission that he did not submit on the same. That notwithstanding, the court will now determine whether the taxing officer exercised her discretion judiciously in arriving at the decision.
30. The Principles of taxation were aptly stated in Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and Others (1972) EA 162 where the court noted as follows:
 - “(a) successful litigant ought to be fairly reimbursed for costs he has had to incur
 - (b) That costs be, not allowed to rise to such level as to confine access to



justice to the wealthy. (c) that the general level of remuneration of advocates must be such as to attract recruits to the profession and (d) that as far as practicable there should be consistency in the awards made. (e) that there are no mathematical formulae to be used by the taxing master to arrive at the precise figure. Each case has to be decided on its merits and circumstances (f) the taxing officer has discretion in the matter of taxation but he must exercise the discretion judiciously and not whimsically (g) the court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.”

31. In the case of Kipkorir Titoo & Kiari Advocates vs Deposit Protection Fund Board (2005) 1 KLR 528 the court of Appeal held that:-

“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- an example of an error of principle is where the costs allowed are so manifestly excessive s to justify an inference that the taxing officer acted on erroneous principles.”

32. In the Ruling dated 29th October 2024 the Taxing officer relied on the Court of Appeal case of Joreth Ltd versus Kigano & Associates Nairobi CA Civil Appeal No 66 of 1999 [2002] eKLR referencing how to tax the subject matter of a suit if the pleadings, judgment or settlement are not ascertainable.

33. She further relied on the case of Premchand Raichand Limited & Another [1972] EA 162.

34. The matter had initially been settled by consent on 9th June 2023, and the consent adopted as a judgement of the court on 12th June 2023. From the consent, pleadings and the value of the development of the suit property the beach court apartments. the subject matter value was not specified and therefore unascertainable.

35. The Taxing Officer also considered that there were more than 3 applications filed and determined in the primary suit indicating that the labour that was expended in the suit. The location of the suit property and its developments intimated that the suit property is of high value. However, the case never went to full hearing as the matter was settled.

36. The Taxing Officer, in her discretion taxed instruction fees at Kenya shillings Five Hundred Thousand Kshs. 500,000/ and all the taxed costs came to Kenya shillings One Million Sixty Thousand Seven Hundred and Forty Seven and Fifty cents (Kshs 1,060,747.50/-)

37. From the foregoing, I find that the taxing officer judiciously exercise her discretion in arriving at her decisions and I find no reason to disturb the same. The Applicant has not demonstrated that the taxing officer erred in principle in arriving at her decision.

38. In the end, I find that the application is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF JUNE 2025.

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HON. T. MURIGI

JUDGE

In the presence



Mulongo holding brief for Karanja for the Advocate/Respondent

