



Karweru t/a Karweru & Company Advocates v Mburu & another (Environment and Land Miscellaneous Case E017 of 2021) [2025] KEELC 4669 (KLR) (23 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4669 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E017 OF 2021
MN GICHERU, J
JUNE 23, 2025

BETWEEN

CHARLES M KARWERU T/A KARWERU & COMPANY
ADVOCATES APPLICANT

AND

MARY NJOKI MBURU 1ST RESPONDENT
SAMUEL MACHARIA MBURU 2ND RESPONDENT

RULING

1. This ruling is on the chamber summons dated 10/4/2023. The summons which is by the Applicant (“Advocate”) is against the Respondents (“Clients”) and seeks the following orders.
 1. The taxing officers decision dated 29-3-2023 be reviewed, varied or set aside.
 2. This court be pleased to tax as drawn the advocate-client bill of costs dated 24-6-2021.
 3. In the alternative to prayer 2, this court be pleased to remit the bill of costs dated 24-6-2021 before a different taxing master.
 4. The costs of this application be provided for.
2. The motion which is brought under Rule 11 of the Advocates Remuneration order and Sections 1A, 3A and 3B of the *Civil Procedure Act* is based on three grounds and is supported by an affidavit sworn by C.M. Karweru advocate, dated 10-4-2023. The affidavit has four (4) annexures.

The gist of the above material is as follows. Firstly, the taxing officer in her ruling of 29-3-2023 did not exercise her discretion judicially. Secondly, she did not take into account matters that should have been taken into account. Thirdly, she misdirected herself and acted contrary to well settled principles on the law of taxation. Fourthly, the advocate represented the clients in Nyeri ELC 203/2013 as consolidated



with Nyeri ELC 168 of 2015 until 20-6-2017 when the firm of Wanyoike and Macharia took over the matter. Fifthly, as a result of that change a final fee note of Kshs. 252,400/= was sent to the Respondents vide a letter dated 10-8-2017. Sixthly, on 17-12-2021, the advocate filed an advocate client bill of costs dated 24-6-2021. Seventhly, the taxing officer ruled on 29-3-2023. The advocate was dissatisfied with the decision of the taxing officer and a letter requesting for the reasons of the taxing officer decision has not been responded to. Finally the taxing officer should have taxed the bill of costs as presented. For the above and other reasons, the Applicant prays for the orders.

3. The motion is opposed by the Respondents who have sworn a replying affidavit dated 13-9-2024 in which they reply as follows. One, there exists an agreement on fees between the Applicant and the Respondents which capped the fees at Kshs. 300,000/=. Secondly, when the Respondents changed counsel from the Applicant's firm to that of Wanyoike and Macharia Advocates, the Applicant wrote to the new firm asking for fees of Kshs. 252,400/=. Thirdly, the Respondents paid the fees in full but the Applicant did not issue them with receipts. Fourthly, they are in agreement with the taxing officer's ruling that the court does not have jurisdiction to tax the bill of costs. Fifthly, if there was no fees agreement, the Applicant would not have written to the Respondents' advocate claiming fees balance. Sixthly, the bill of costs dated 24-6-2021 is unlawful owing to the fees agreement. For the above and other reasons, the Respondents pray for the dismissal of the summons herein.
4. Counsel for the parties filed written submissions dated 10-12-2024 and 17-9-2024 respectively. The Applicant's counsel identified the following issue for determination.
 - i. Whether the letters dated 1-8-2015 and 9-12-2015 can be construed as a fees agreement under Section 45(1) of the *Advocates Act*.
5. On the other hand, the Respondent's counsel identified one issue for determination as follows.
 - i. Whether the taxing officer's ruling can be reviewed, varied or set aside.
6. I have carefully considered the summons in its entirety including the grounds, the supporting affidavit, the annexures, the replying affidavit, the written submissions by learned counsel for the parties and the law cited therein. I make the following findings on the issues raised by the learned counsel for the parties.
7. On the Respondent's counsel's issue, I find that this court can indeed review the decision of the taxing officer. Such review is under Rule 11(2) of the Advocates Remuneration Order and not under Order 45 of the *Civil Procedure Rules*. The summons by the Applicant clearly states that it is brought under Rule 11 of the Advocates Remuneration Order and Sections 1A, 3A and 3B of the *Civil Procedure Act*. It does not purport to be under Order 45 *Civil Procedure Rules*. Order 45 deals with cases where a court reviews its own decision. It does not deal with a higher court reviewing the decision of a lower court.
8. Regarding the issue raised by the Applicant, I find that the letters of 9-12-2015 and 1-8-2017 cannot be construed as a fees agreement but they can be construed as evidence of the existence of a fees agreement. The letter dated 9-12-2015 clearly states the instruction fees as Kshs. 300,000/=. This letter is by the Applicant itself. The Applicant cannot run away from the letter. The latter letter of 1-8-2017 states the remainder of the fees as Kshs 252,400/=. In the bill of costs dated 24-6-2021, the instruction fees is Kshs 500,000/=. This fees of Kshs. 500,000/= is inconsistent with the instruction fees in the letter dated 9-12-2015. It is for the Applicant to explain this discrepancy in instruction fees.

There is no explanation at all from the affidavit dated 10-4-2023. The Applicant did not find it necessary to swear a supplementary affidavit to explain this discrepancy. It is the Applicant who has the burden of proof in this summons to prove that he is entitled to the orders sought. There is no burden of proof on the Respondents.



9. While it is true that there exist legal mechanisms for advocates to obtain legal fees from their clients where the same has not been paid and advocates can file an advocate/client bills of costs as held in the case of *Zachary Mogeni vs. Standard Chartered Bank (K) Ltd* (2021) eKLR”, such fees can only be claimed if it has not been paid. In this case the Applicant has not proved that it has not been paid.

10. Section 120 of the *Evidence Act* provides as follows.

“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”.

In this case, the Applicant has not explained the difference in instruction fees in the letter dated 9-12-2015 and in the bill of costs dated 24-6-2021. The question that lingers is why the discrepancy and this lends credence to the deposition by the Respondents that there was indeed an agreement on fees between the Applicant and the Respondents which capped such fees at Kshs 300,000/=.

11. For the above state reasons, I find no merit in the summons dated 10-4-2023 which I dismiss with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23RD DAY OF JUNE , 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel –

Respondent's Counsel – Mr. Ng'ang'a

