



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISCELLANEOUS CIVIL APPLICATION NO. 300 OF 2013**

**KENYARIRI & ASSOCIATES ADVOCATES.....ADVOCATE/APPLICANT**

**VERSUS**

**SALAMA BEACH HOTEL LIMITED.....CLIENT/RESPONDENT**

**RULING**

1. The applicant, **KENYARIRI & ASSOCIATES ADVOCATES**, was the law firm which represented **SALAMA BEACH HOTEL LIMITED, HANS JURGEN LANGER** and **ACCREDO AG** in different cases which were before different courts.
2. It is evident that at some point in time, the relationship between the advocates and their said clients, broke down. After the applicant fell out with the said clients, it lodged Bills of costs for taxation.
3. Following the taxation of the Advocate/Client Bills of Costs, the applicant has now come to this court, asking that the court should grant judgment against his erstwhile clients, in terms of the Certificates of Taxation.
4. The applications were brought pursuant to the provisions of section 51 (2) of the Advocates Act.
5. As the applications are similar, and because the respective parties have made similar submissions either in support of or in opposition to the said applications, this Ruling shall apply with equal force to the three applications, namely;
  - i. *Kenyariri & Associates Advocates Vs Salama Beach Hotel Limited Misc. Case No. 299/2013;*
  - ii. *Kenyariri & Associates Advocates Vs. Hans Jurgen Langer, Misc. Civil Application No. 298/2013; and*
  - iii. *Kenyariri & Associates Advocates Vs Hans Jurgen Langer & Accredo AG, Misc. Civil Application No. 300/2013.*
6. The following facts are not in dispute;
  - a. *That in Misc. Application No. 300/2013 there is a Certificate of Taxation dated 4<sup>th</sup> August 2014. The said certificate states that Hon. D.W. Nyambu taxed the costs against the clients in the sum of Kshs. 1,044,189/-.*
  - b. *That in Misc Application No. 299/2014 there is a Certificate of Taxation dated 27<sup>th</sup> October 2014. The said certificate states that Hon. R. Nyakundi taxed the costs against the client in the sum of Kshs. 13,021/-.*

- c. *That in Misc Application No. 298/2013 there is a Certificate of Taxation dated 31<sup>st</sup> July 2014. The said certificate states that Hon. D.W. Nyambu taxed the costs against the client in the sum of Kshs. 1,140,187/-.*
- d. *The clients have not filed any references to challenge the decisions made by the Taxing Officers.*

According to the clients, they were never notified about the dates when the Taxing Officers were due to give their respective Rulings. Therefore, the clients indicated that they only became aware of the results of the taxation processes, when the advocate filed the present applications.

7. Having been unaware of the dates when the Rulings were delivered, the clients told this court that they were unable to request the respective taxing officers for the reasons which informed their decisions.
8. It therefore followed that because the clients did not get to know the reasons which led the taxing officers to hand down their respective decisions, the clients could not have filed any references to challenge the decisions.
9. Nonetheless, the clients have made the following position crystal clear;

*“7. Despite the foregoing, the Respondents are not challenging the amount that was taxed by the learned Deputy Registrar, thus, they (sic!) is no specific item in the bills of costs which is being challenged as envisaged under paragraph 11 (1) of the Advocates (Remuneration) Order”.*

10. The complaint of the clients was that the taxing officers did not take into account the fact that the clients had already made some payments to the advocate, so that the said sums should have been deducted from the costs being awarded to the advocate.
11. The second complaint was that none of the taxing officers addressed the issue of retainer, which the clients had specifically raised in their pleadings.
12. But in the same vein, the clients said;

*“The issue of retainer was conclusively addressed by Angote J. who held that there was no retainer and that the bills should be taxed”.*

13. If the learned Judge had dealt with the issue of retainer so conclusively as the clients have said, it would not have been open to the taxing officers to give new or further consideration to that issue.
14. According to the clients;

*“12. The learned Judge also held that there was an amount in contention, which could only be addressed by filing a fresh suit or by filing a review application before the learned Deputy Registrar in Malindi”.*

15. On the strength of those words of Angote J., the clients told this court that they had already filed an application for review, at the Malindi Law Courts.
16. In the light of that development, the clients appear to have already set in motion a process which could determine the issue regarding the amounts which may or may not be deductible from the taxed costs, when the advocate seeks to execute the Decree founded upon the Certificates of Taxation.
17. But then again, the clients submitted that the decisions of the Deputy Registrars in Malindi would not be binding on the Deputy Registrars in Nairobi. If that be the case then the clients ought to have taken appropriate steps in relation to the matters before the Deputy Registrars who taxed the Bills of Costs in Nairobi. But no such steps have been taken by the clients.
18. The clients have asked this court, in their submissions, to review, vary or set aside the decisions of the taxing officers.
19. The said request is not pegged to any application filed by the clients. The request has been made in submissions which were an answer to the advocate’s application for judgment. For that reason, the court declines the clients’ request for a relief which has been sought through a response to the application by the other party.

20. Section 51 (2) of the Advocates Act stipulates as follows;

*“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs”.*

21. The finality of the Certificate of Taxation is emphasized by those words. Therefore, it would be wrong for the court to permit a party to challenge the finality of a Certificate of Taxation when the said certificate was being used as a basis for getting judgment.

22. In this case, it would be even worse to allow such a challenge when the clients have expressly said that they were not challenging the figures arrived at during the process of taxation.

23. In **DONHOLM RAHISI STORES (Suing as a Firm) Vs. EAST AFRICA PORTLAND CEMENT LIMITED [2005] e KLR**, Waweru J said;

*“Taxation of costs, whether those costs be between party and party or between advocate and client, is a special jurisdiction reserved to the taxing officer by the Advocates (Remuneration) Order. The Court will not be drawn into the arena of taxation except by way of a reference from a decision on taxation, made under Rule 11 of the Advocates (Remuneration) Order”.*

24. As there is no such reference before me, from the clients, and in the light of finality bestowed on Certificate of Taxation by section 51 (2) of the Advocates Act, I find no reason, in law or in fact, to deny the advocate the request for judgment.

25. In the result I now enter judgment in favour of the advocate as follows;

- a. *In Misc. Application No.300/2013, Kshs.1,044,189/-;*
- b. *In Misc. Application No. 299/2013, Kshs. 13,021/-;*
- c. *In Misc. Application No. 298/2013, Kshs. 1,140,187/-*
- d. *In each of the 3 cases, the advocate is also granted costs of the respective applications.*

26. In relation to the execution of the Decrees extracted from these judgments, I direct that the same shall be undertaken in the normal manner, as provided for by law.

**DATED, SIGNED and DELIVERED at NAIROBI this 16<sup>th</sup> day of February 2015.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of**

Kenyariri for the Advocate/Applicant

Kyalo for Ndegwa for the Client/Respondent.

Collins Odhiambo – Court clerk.