



**Robson Harris Advocates LLP v Social Health Authority as the legal successor of the National Health Insurance Fund (NHIF) (Miscellaneous Application E132 of 2025) [2025] KEELRC 2503 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2503 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E132 OF 2025  
SC RUTTO, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**ROBSON HARRIS ADVOCATES LLP ..... APPLICANT**

**AND**

**SOCIAL HEALTH AUTHORITY AS THE LEGAL SUCCESSOR OF THE NATIONAL HEALTH INSURANCE FUND (NHIF) ..... RESPONDENT**

**RULING**

1. What is before this Court for determination is a Notice of Motion dated 15<sup>th</sup> May 2025, through which the Applicant/Advocate seeks the following orders;
  1. Spent.
  2. That Judgment be entered for the Applicant as against the Respondent for the sum of Kenya Shillings Twenty Million, Six Hundred and Forty-Three Thousand Four Hundred (Kshs. 20,643,400.00) being outstanding legal fees, disbursements, and Value Added Tax (VAT).
  3. That the Respondent be ordered to pay interest on the said sum at court rates from 28<sup>th</sup> April, 2024, until payment in full.
  4. That the Respondent bears the costs of this application.
2. The Application is premised on the grounds set out on the face of the Motion and the Supporting Affidavit of Kevin Mbogo, sworn on 15<sup>th</sup> May 2025. Mr. Mbogo has described himself as an Advocate of the High Court of Kenya and a partner at Robson Harris Advocates LLP, the Advocate/Applicant herein.
3. Grounds in support of the Motion are that on or about 20<sup>th</sup> April, 2022, the Applicant herein entered into a General Service Level Agreement (Agreement) with the Respondent/Client for the provision



- of legal services. Pursuant to the said Agreement, the Respondent vide a letter of instructions dated 11<sup>th</sup> May, 2022, instructed the Applicant to represent them in a suit being ELRC PET No. E066 of 2022 Federation of Kenya Employers -Vs- NHIF Management Board & 4 Others and David Manyonge Saratuki & Another as Interested Parties.
4. Mr. Mbogo deposes that the Applicant duly accepted the said instructions and communicated the said acceptance vide a letter received on 13<sup>th</sup> May, 2022, by the Respondent. The Applicant proceeded to file all the requisite pleadings and dutifully and zealously represented the Respondent in the said proceedings to its logical conclusion.
  5. Mr. Mbogo avers that the Respondent and the Applicant in accordance with the Agreement, specifically clauses 19.1 and Schedule 1 thereof, agreed on the legal fees of Kshs. 35,480,000.00 exclusive of VAT and disbursements.
  6. Consequently, and upon request by the Respondent, the Applicant herein raised a fee note, being Fee Note No. 3299 for Kshs. 41,286,800.00 being the total inclusive sum of the legal fees, VAT and disbursements.
  7. Mr. Mbogo further avers that under the Agreement, Schedule 1 Part B, it was agreed by the parties that the fees charged would be paid as follows: -
    - i. Initial deposit being 30% of the agreed fees upon issuance of instructions;
    - ii. Further deposit being 20% the agreed fees upon the matter being certified ready for hearing; and
    - iii. Final payment being 50% of the agreed fees upon conclusion of the matter.
  8. Pursuant to the above provision, the Respondent made an initial payment being 30% of the fee note on or about July 2022, being Kshs. 11,190,728.00. While making the payment, the Respondent made a withholding tax on the same sum and declared the entire amount as paid to the Kenya Revenue Authority.
  9. That on 2<sup>nd</sup> December, 2022, the Applicant wrote to the Respondent making them aware of the above occurrence and the fact of the outstanding VAT sum at the material time following the withholding.
  10. Mr. Mbogo further avers that the matter had by December 2022 been certified ready for hearing, hence the Applicant sought the payment of the second instalment, being 20% of the total fee note. The Respondent duly made the said payment totaling Kshs. 8,257,360.00.
  11. Consequently, the matter proceeded for hearing and the parties in the said matter duly filed their submissions and had the matter set for Judgment.
  12. While the matter was pending for Judgment, the Petitioner, noting the change of laws governing the health insurance sector, sought to withdraw the Petition with no order as to costs.
  13. The Respondent acceded to the said request, whereupon instructions, the Applicant in Court on 13<sup>th</sup> March, 2024, acceded to the Petitioner's Notice of Withdrawal, bringing the matter to a conclusion.
  14. Mr. Mbogo deposes that pursuant to Schedule 1 Part B of the Agreement, the Applicant sought settlement of the balance of fees, being 50% of the Fee Note, being Kshs. 20,643,400.00, the matter having been concluded.
  15. That the Respondent, despite several reminders, has refused to make good the said payment and instead sought to have the amount reviewed downwards, citing that there was no Judgment in the matter.



16. Despite the explanation as to the difficulty in such a request, noting that the Applicant had incurred full-blown tax liabilities following the action of the Respondent to levy the withholding tax on the Fee Note, the Respondent has refused, failed and blatantly declined to settle the Applicant's balance of fees.
17. According to Mr. Mbogo, under Clause 19.1.2 of the Agreement, the Respondent was obligated to pay legal fees within thirty (30) days of invoicing, but has defaulted on the outstanding Kshs. 20,643,400.00 invoiced on 28<sup>th</sup> March, 2024, despite several reminders, meetings and demand letters, including the Applicant's final reminder dated 12<sup>th</sup> May 2025.
18. It is Mr. Mbogo's deposition that the debt is liquidated, undisputed, and long overdue, yet the Respondent has failed, refused, or neglected to settle it, in blatant breach of the Agreement.
19. Mr. Mbogo adds that the Applicant has suffered financial prejudice due to the Respondent's unjustified refusal, including bearing tax liabilities for the unpaid fees.
20. The Respondent/Client responded to the Application by filing Grounds of Opposition dated 15<sup>th</sup> July 2025. The Respondent contends that: -
  1. The Court lacks the requisite jurisdiction to hear and determine and issue the order sought herein for reasons that the Fee Note No. 3299 and the content thereof which is the subject of the suit herein falls under the Advocates Remuneration Order, which should be determined by the taxing master.
  2. That the jurisdiction of this honorable court should only be invoked after taxation by the taxing master to review any principle error by the taxing master in case there is one. This is because the dispute involves questions of quantum and it is the taxing officer who is best suited to deal with the same.
  3. The Application is couched in a way that it wants this honorable court to usurp the jurisdiction of the taxing master which in principle is a jurisdiction error and question.
  4. The Fee Note No. 3299 and the content thereof which is the subject of the suit herein, is incompetent on the face of it since it only itemized the legal activities undertaken by the Applicant but does not demonstrate with accuracy the resultant cost/amount in each item in line with the Advocates Remuneration Order hence fails to show how the Applicant arrives at a figure of Kshs 41, 286, 800 that is claimed against the Respondent.
  5. The Fee Note No. 3299 and the content thereof which is the subject of the suit herein, is vague, unsubstantiated for instance does not even disclose the number of folios received and perused, number of folios drafted, cost of filing among other errors and therefore fails to meet the requisite standard/threshold of a fee Note in line with the Advocates Remuneration Order.
  6. The Service Legal Agreement has expressly stated that any remuneration to the Applicant ought to be in line with the Advocate Remuneration Order. This is a clear manifestation that no specific amount was agreed upon by the Applicant and the Respondent as legal fees, and any payment was to align with the Advocate's Remuneration Order as a document of reference.
  7. The correct procedure would be for the Applicant to file an Advocate-Client Bill of Costs, thus, the present suit is defective.
  8. The Notice of Motion Application is tainted with falsehood in that the Applicant avers that the Respondent and the Applicant in accordance with the Service Legal Agreement, specifically clauses 19.1 and Schedule 1 thereof, agreed on the legal fees of Kshs.35,480,000.00 exclusive



of VAT and disbursements, yet clause 19.1 of the Service Legal Agreement annexed does not contain such express provision.

### **Submissions**

21. The Application was canvassed by way of written submissions. In support of the Application, it has been submitted that there exists a retainer agreement between the Applicant and the Respondent within the meaning of Section 45 of the *Advocates Act* and the same is enforceable against the Respondent. In this regard, the Applicant has contended that the Respondent is estopped from claiming otherwise by virtue of having not only made part payments but also having a legal declaration to the Kenya Revenue Authority that the legal fees payable to the Applicant was a total of Kshs 35,480,000.00.
22. The Applicant proceeded to submit that the deduction of VAT withholding tax is predicated on the condition that the agent appointed to collect the tax for the Kenya Revenue Authority has in fact made a payment to a resident person. That the Respondent cannot claim to have made deductions from funds that were not payable.
23. That the Respondent despite having made the withholding in violation of the law, did not make the full payments to the Applicant, essentially forcing the Applicant to settle the 14% balance of the VAT sum to the Kenya Revenue Authority in order to avoid being penalized for failing to remit VAT.
24. That further, the Respondent has made payment totaling 50% of the Fee Note No. 3299 pursuant to the Agreement and thus is estopped from denying the existence of the retainer agreement. In support of this position, the Applicant placed reliance on the case of *Waltons Stores (Interstate) Ltd v Maher (1988)*.
25. Submitting against the Application, the Respondent has argued that Section 13 of the Advocates Remuneration Order grants direct power to the taxing officer to proceed with taxation between an advocate and client on an application which has not happened in this case. In support of this position, the Respondent referenced the case of *Charles M. Karweru t/a Karweru & Co. Advocates v Maisha Flour Mills Ltd (2019) eKLR*.
26. The Respondent further posited that the jurisdiction of this Court should only be invoked after taxation by the taxing master to review any error of principle.

### **Analysis and Determination**

27. To my mind, the issues falling for the Court's determination are:
  - i. Whether there is a retainer agreement between the Applicant and the Respondent;
  - ii. Depending on (i), whether the Court has jurisdiction to entertain the Application; and
  - iii. Whether the Application is merited.

### **Retainer Agreement?**

28. The gist of the Applicant's case is that the parties herein entered into a General Service Level Agreement for the provision of legal services. That pursuant to the said Agreement, the Respondent instructed the Applicant herein to represent them in a suit being ELRC PET No. E066 Of 2022 Federation of Kenya Employers -Vs- NHIF Management Board & 4 Others and David Manyonge Saratuki & Another as Interested Parties. The Applicant duly accepted the said instructions and in accordance with clause



- 19 of the Agreement, the parties agreed on the legal fees of Kshs. 35,480,000.00 exclusive of VAT and disbursements.
29. It is notable that the Respondent has not denied the existence of the Agreement.
  30. As can be discerned from the Agreement, the retainer was general and was for a period of two years from 20<sup>th</sup> April 2022 to 20<sup>th</sup> April 2024. As such, it was not limited to any single matter.
  31. Under Clause 19.1 of the Agreement, fees for services rendered by the Applicant were to be charged in accordance with the provisions of the Advocates Remuneration Order and such laws, rules and regulations governing the services in the manner set out in Schedule I thereto, subject to receipt of an itemized fee note/invoice from the Law Firm.
  32. Therefore, it is clear that at the point of entering into the Agreement, the parties did not fix the amount of the Applicant's legal fees. Seemingly, it was consequent to the Applicant being instructed to represent the Respondent in ELRC PET No. E066 Of 2022 Federation of Kenya Employers -Vs- NHIF Management Board & 4 Others and David Manyonge Saratuki & Another as Interested Parties, that the parties agreed on the sum of Kshs 35,480,000.00. This can be discerned from the Respondent's letter dated 21<sup>st</sup> June 2022, as read together with the Applicant's letter dated 22<sup>nd</sup> June 2022. It is apparent that this series of correspondence formed the Agreement regarding the legal fees payable to the Applicant in the matter.
  33. To augment the above position, it is also noteworthy that the Respondent paid to the Applicant the sum of Kshs 11,190,728.00 and in so doing, withheld the sum of Kshs 709,600/- as per the Withholding Certificate dated 26<sup>th</sup> July 2022. Indeed, as per the said Withholding Certificate, the gross amount of the transaction was identified by the Respondent as being Kshs 35,480,000.00. By so doing, the Respondent was, in essence, acknowledging that the total legal fees due to the Applicant was Kshs 35,480,000.00.
  34. Section 45(1) of the [Advocates Act](#) provides for agreements between advocates and clients regarding remuneration as follows:

“Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

    - (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;
    - (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate's instruction fee in respect thereof or his fees for appearing in court or both;
    - (c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof, and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.
  35. Applying the provisions of Section 45(1) of the [Advocates Act](#) to the case herein, I am led to conclude that the parties herein entered into a valid retainer agreement in which the sum of Kshs 35,480,000.00 was fixed as the Applicant's remuneration with respect to representation in ELRC PET No. E066 Of 2022 Federation of Kenya Employers -Vs- NHIF Management Board & 4 Others and David Manyonge Saratuki & Another as Interested Parties.



36. That said, I now move to determine whether the Court has jurisdiction to determine the matter on account of the existence of the retainer agreement.

### **Jurisdiction?**

37. The Respondent's contention is that this Court does not have the requisite jurisdiction to entertain the instant Application. According to the Respondent, the matter should be subjected to taxation in line with Rule 13 of the Advocates Remuneration Order.

38. To resolve this question, it is imperative to consider Section 45(6) of the *Advocates Act*, which is couched as follows;

“(6) Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.”

39. As the Court has found that the parties herein entered into a valid retainer agreement in line with Section 45(1) of the *Advocates Act*, it follows that the provisions of subsection (6) come into play and consequently, the matter is not subject to taxation.

40. Needless to say, and contrary to the Respondent's contention, the taxing master is precluded from reviewing or adjusting the fees agreed by the parties. As such, this Court has jurisdiction to deal with the matter herein.

### **Merit in the Application**

41. From the record, the Respondent paid to the Applicant an initial sum of Kshs 11,190,728.00 and subsequently, a further payment of Kshs 7,759,011.00 on 27<sup>th</sup> February 2023, pursuant to the fee note raised by the Applicant vide its letter dated 7<sup>th</sup> December 2022.

42. It is also evident that following the withdrawal of the matter, the Applicant raised a further fee note of Kshs 20,643,400/- on 28<sup>th</sup> March 2024 and thereafter sent several reminders to the Respondent urging them to settle the same.

43. Apparently, the Respondent did not settle the Applicant's fees as requested. Instead, the Respondent, vide a letter dated 17<sup>th</sup> September 2024, asked the Applicant to review the fee note on the basis that the matter was withdrawn due to the coming into force of the Social Health *Insurance Act*. The Applicant was not agreeable to the Respondent's proposition and proceeded to cite the tax obligations that it had incurred and the declaration of income to the Kenya Revenue Authority. Ultimately, there was no resolution on the issue and the legal fees remained outstanding.

44. Revisiting the Agreement entered into by the parties on 20<sup>th</sup> April 2022, it is clear that under Schedule 1 thereof, the Respondent was to pay 50% of the fees upon conclusion of the case.

45. From the record, the matter was concluded upon the withdrawal of the Petition by the Petitioner on 13<sup>th</sup> March 2024.

46. At the time of filing the instant Application, there was no evidence that the Respondent had settled the Applicant's outstanding fees. Accordingly, the Court finds that the same is due to the Applicant.



## Orders

47. In sum, the Court finds the Applicant's Notice of Motion dated 15<sup>th</sup> May 2025 to be with merit and consequently the same is allowed and Judgment is entered in favour of the Applicant against the Respondent for Kshs 20,643,400.00 together with interest at court rates from the date of filing the Application until payment in full.

48. To bring this matter to a close, there will be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Applicant Mr. Mbogo

For the Respondent No appearance

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

