

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MILIMANI  
FAMILY DIVISION  
MISC APPLICATION NO. E223 OF 2023**

**ASHFORD MURIUKI MUGWUKU  
T/A ASHFORDS & CO. ADVOCATES..... APPLICANT**

**VERSUS**

**ISABELLA WANJIKU KARANJA ..... 1<sup>ST</sup>  
RESPONDENT**  
**PETER MBIYU KOINANGE ..... 2<sup>ND</sup> RESPONDENT**  
**SAMUEL KARUGA KOINANGE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before the Court are two applications, which, though filed separately by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, converge on a singular, contentious event: the *ex parte* taxation of an Advocate-Client Bill of Costs that culminated in a Certificate of Taxation dated 25 July 2024 for the sum of Kshs. 61,312,221.10.
  
2. The Court, in exercise of its case management powers and acknowledging the substantial identity of the subject matter,

directed that the two applications be consolidated for the purposes of hearing and determination.

3. Notice of Motion dated 19 November 2024, filed by the 1<sup>st</sup> Respondent, seeks principally to set aside the ruling of the Taxing Master delivered on 10 June 2024 and the subsequent Certificate of Costs.
4. The Application dated 23 August 2024, filed by the 3<sup>rd</sup> Respondent, seeks stay of execution and the setting aside of the same taxation orders.
5. The Advocate/Applicant has vigorously opposed both Applications. The dispute presents a complex tapestry of factual contentions regarding service of process, the existence of a retainer, the conduct of estate administrators, and the sanctity of the taxation process.

### **Brief Background**

6. This matter is an offshoot of a protracted and acrimonious succession dispute concerning the Estate of the Late Charles Karuga Koinange, a man of considerable means, who died on 20 February 2004.
7. The primary succession cause, Nairobi High Court Succession Cause No. 998 of 2006, has been pending in our courts for nearly two decades. It has morphed into a hydra-headed litigation monster, spawning numerous applications, appeals,

and miscellaneous causes, of which the present taxation dispute is but one head. The record indicates that the estate comprises vast tracts of land, shares in various companies, and significant movable assets, which have unfortunately become the apple of discord among the beneficiaries.

8. The administration of the Deceased's estate has been characterized by shifting alliances and disputes over representation. Currently, the estate is administered by: Isabella Wanjiku Karanja, Peter Mbiyu Koinange and Samuel Karuga Koinange.
9. It is a matter of record, and indeed a point of contention in these applications, that the Administrators have not always acted in unison regarding legal representation. The 1<sup>st</sup> Respondent is represented by M/s Murgor & Murgor Advocates; the 3<sup>rd</sup> Respondent is represented by M/s Kamau Kuria & Company Advocates; while the 2<sup>nd</sup> Respondent appears to have retained the Applicant, Ashfords & Co. Advocates, at various stages.
10. The Applicant filed an Advocate-Client Bill of Costs dated 16 October 2023 in this Miscellaneous Cause (HCFMISC/E223/2023). The Bill was astronomical in its claim, seeking a total of Kshs. 944,273,728.50 for professional services allegedly rendered to the Estate of the Late Charles Karuga Koinange.

11. The taxation of this Bill proceeded before the Taxing Master in the absence of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. On 10 June 2024, the Taxing Master delivered a ruling taxing the Bill. Subsequently, on 25 July 2024, a Certificate of Taxation was issued, certifying the costs payable to the Advocate at Kshs. 61,312,221.10.
12. The Respondents aver that they were unaware of the taxation hearing date and only learned of the outcome when the Advocate moved to enforce the Certificate of Costs. This triggered the filing of the instant applications to stay execution and set aside the taxation.

#### **Notice of Motion dated 19 November 2024**

13. The 1<sup>st</sup> Respondent has moved the Court under Order 22 Rule 52, Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B, and 3A of the Civil Procedure Act. Her application is supported by her Affidavit sworn on the same date.
14. While admitting receipt of the Bill of Costs via email on 18 October 2023, the 1<sup>st</sup> Respondent contends that the covering email promised a subsequent "Notice of Taxation" with a hearing date, which was never sent. She argues this violated Rule 13(2) and Rule 72 of the Advocates (Remuneration) Order.

15. The 1<sup>st</sup> Respondent posits that the failure to serve the hearing date resulted in her being condemned unheard, a violation of Article 50 of The Constitution. She challenges the Advocate's standing to bill the Estate, arguing that instructions to bind the estate must be collegial (joint) among the Administrators. She asserts she never instructed the Applicant.
16. The 1<sup>st</sup> Respondent highlights a previous Misc. Cause No. E008 of 2020, where a similar bill was filed and withdrawn, suggesting the current filing is an attempt to circumvent objections raised in that prior matter.

#### **Notice of Motion dated 23rd August 2024**

17. The 3<sup>rd</sup> Respondent's Application mirrors the 1<sup>st</sup> Respondent's but adds specific allegations regarding the history of the litigation.
18. The 3<sup>rd</sup> Respondent alleges the Advocate obtained the 10 June 2024 Ruling through fraudulent misrepresentation by claiming to act for all administrators when, in fact, the 3<sup>rd</sup> Respondent has been represented by Kamau Kuria & Co. since 2014.
19. The 3<sup>rd</sup> Respondent describes his failure to respond to the initial email service as inadvertence caused by the misleading nature of the email which promised a future date that never came.

20. He argues that the Advocate withdrew the previous cause (E008 of 2020) to avoid a Preliminary Objection regarding the retainer, only to refile the same Bill in the current cause (E223 of 2023).

### **The Advocate's Opposition**

21. The Advocate filed Replying Affidavits on 22 October 2024 and 28 January 2025. He relies on an Affidavit of Service by Sheila Mugo, claiming electronic service of the Bill and court directions was effected on the Respondents' email addresses. He argues the Respondents ignored the process at their own peril.

22. The Applicant argues his retainer is *res judicata* based on the Ruling of Justice Mbogholi Msagha dated 14 November 2019 in HCCC No. 152 of 2017 (O.S), which ordered the administrators to pay his fees. He asserts the previous cause was properly withdrawn in the presence of the Respondents' counsel, leaving him free to file fresh proceedings.

### **Analysis & Determination**

23. Drawing from the pleadings and submissions, the following issues emerge for determination:

- a) Whether the service of the Notice of Taxation complied with the mandatory requirements of the Advocates (Remuneration) Order;

- b) Whether the failure to serve a specific hearing notice renders the taxation proceedings *ex parte* null and void *ex debito justitiae*;
- c) Whether there existed a valid retainer between the Advocate and the Estate Administrators;
- d) Whether the filing of the current Bill of Costs, following the withdrawal of Cause E008 of 2020, constitutes an abuse of court process;
- e) Whether the Court should exercise its discretion to set aside the Certificate of Taxation and the Ruling of 10 June 2024.

#### The Sacrosanctity of Service

24. The first and most critical issue is whether the Respondents were served in accordance with the law. The taxation of costs is a quasi-judicial process that results in a monetary decree. As such, the strictures of due process and fair hearing apply with equal force as they do in main suits.
25. The procedure for taxation is governed by the Advocates (Remuneration) Order. Paragraph 72 constitutes the statutory command regarding notice. It provides:

*When a bill of costs has been lodged for taxation as aforesaid, the registrar shall... issue to the party lodging the bill a notice of the date and time... fixed for taxation thereof and shall also issue a copy of such notice... to each advocate and other person*

*whose name is endorsed on the bill as entitled to receive notice....*

26. This provision creates a two-step obligation: The Advocate files the Bill and the Registrar fixes a date and time. This specific notice must be served on the party liable to pay.
27. The Advocate relies on an email sent on 18 October 2023. The content of this email, as annexed to the 1<sup>st</sup> Respondent's Application, reads:
- "Please find attached Bill for your perusal and settlement. The same is filed in court under the above referenced case number. We shall be serving you with the notice of taxation / date in due time." (emphasis mine)*
28. This communication is an admission by the Advocate that the email served only the Bill, not the Notice of Taxation. It contained an express undertaking to serve the hearing date later. The Respondents argue this subsequent service never happened. The Advocate's rebuttal in his Replying Affidavit vaguely refers to an Affidavit of Service by Sheila Mugo dated 19 January 2024, but critically, he does not exhibit a specific Notice of Taxation showing the date of the hearing that was allegedly served.
29. Kenyan jurisprudence is replete with decisions emphasizing that service of the date of taxation is mandatory. In

***Humphrey Gitonga Ashford v Board of Governors Chuka High School [2011] eKLR***, the Court held that where a party alleges non-service of a taxation notice, the burden shifts to the serving party to prove strict compliance. If the service is by post or email, it must be shown that the specific document was transmitted.

30. Furthermore, in ***Ngaywa & Kibet Partners LLP v County Government of Kiambu [2022] KEHC 12687***, the Court set aside a taxation ruling where the client had not been afforded a proper opportunity to participate due to external factors (office closure/COVID-19), emphasizing that the discretion of the Taxing Master must be exercised judicially.

31. Most authoritatively, the Court of Appeal in ***Pithon Waweru Maina v Thuku Mugiria [1983] KLR 78*** established the cardinal principle that where a judgment or order is obtained *ex parte* due to non-service of summons, or by analogy, a hearing notice, the setting aside is not a matter of discretion but a matter of right. Kneller JA stated:

*"The court has no discretion if it appears there has been no proper service... the judgment must be set aside."*

32. Applying these principles to the instant case, the email of 18 October 2023 served the Bill but explicitly deferred the hearing notice. There is no evidence on record that the notice

of taxation / date promised in that email was ever served. Serving the Bill alone is insufficient. A party must know when to appear to defend themselves.

33. I, therefore, find that the taxation proceeded without proper notice to the Respondents. This is a fundamental procedural defect that renders the proceedings null and void.

#### The Retainer and Collegial Action of Administrators

34. The Respondents vehemently deny retaining the Advocate. They argue that he acted solely for the 2<sup>nd</sup> Respondent and that, under the law of succession, administrators must act jointly to bind the estate to such a significant liability.
35. The position of administrator is one of trust. Where there are multiple administrators, they generally must act jointly in matters binding the estate, especially regarding significant expenditure like legal fees. The Respondents cite ***Willis Ochieng Odhiambo vs. Kenya Tourist Development Corporation [2018] eKLR***, which affirms that instructions given by one administrator do not automatically bind the estate if not ratified or authorized by the co-administrators.
36. In ***Republic v Disciplinary Tribunal of the Law Society of Kenya ex-parte John Wacira Wambugu [1977] eKLR***, the Court underscored that an Advocate cannot claim fees from an estate based on instructions from a single administrator where

the others have expressly dissented or have their own representation.

37. Here, the record shows a fractured administration. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents have their own Advocates, Murgor & Murgor and Kamau Kuria & Co. The Advocate, Ashford, appears to be the personal Advocate of the 2<sup>nd</sup> Respondent. While the 2<sup>nd</sup> Respondent is an Administrator, he cannot unilaterally burden the estate with Kshs. 944 million or Kshs. 61 million without the concurrence of his co-administrators or a specific court order authorizing such separate representation at the estate's expense.

38. The Advocate's strongest shield is the Order of Justice Msagha in HCCC 152 of 2017 (O.S). The Order states:

*"THAT Respondent [the Advocate] shall present his fee note to the administrators of the estate jointly and severally based on a certificate of taxation."*

39. The 1<sup>st</sup> Respondent argues this order was *obiter* or made in a suit she filed for a different purpose. However, I must respect the orders of a coordinate jurisdiction until set aside. The order establishes a *prima facie* liability of the estate.

40. However, the Order directed payment based on a certificate of taxation. This implies a proper taxation process. It did not validate any specific amount. It merely routed the parties to

the taxation machinery. If that machinery is flawed due to lack of service, the resulting certificate is invalid, regardless of the underlying order on liability. The existence of the 2019 Order justifies the filing of the Bill but does not cure the procedural defects in its taxation.

41. The 3<sup>rd</sup> Respondent raises a valid Preliminary Objection regarding the retainer. He argues he never instructed the Advocate. In ***Kenindia Assurance Co Limited v Olendo [2023] KEELRC 2638***, the Court held that a Taxing Officer acts without jurisdiction if they proceed to tax a Bill where the retainer is disputed. The proper course is to stay taxation and refer the issue of retainer to a Judge.
42. In this case, because the Respondents were not served with the hearing notice, they could not raise this objection before the Taxing Master. The Taxing Master proceeded on the assumption that the retainer was settled, likely relying on the 2019 Order. This highlights why the *ex parte* nature of the proceedings was so prejudicial. The Respondents were denied the chance to argue that, despite the 2019 Order, the specific instructions for the items in the Bill were not covered or were unauthorized.

#### Abuse of Process and Multiplicity of Suits

43. The 3<sup>rd</sup> Respondent has brought to the court's attention a disturbing procedural history involving Misc. Cause No. E008

of 2020. He provides evidence that the Advocate filed an identical Bill of Costs in E008 of 2020. The Respondent filed a Preliminary Objection challenging the retainer in that file. Instead of prosecuting that Bill and facing the objection, the Advocate withdrew it and filed the fresh Bill in E223 of 2023.

44. While a party generally has the right to withdraw and refile, doing so to evade a pending jurisdictional objection borders on abuse of process. It essentially forum shopping within the same division to avoid an adverse ruling on the retainer issue.
45. This multiplicity of suits reinforces the need for this Court to intervene. The taxation process cannot be used as a tool of oppression or to bypass legitimate defences raised by the Estate administrators.

#### Setting Aside *Ex-Parte* Orders

46. The power to set aside *ex parte* orders is discretionary. The guiding principles were crystallized in the landmark case of *Shah v Mbogo EA 93*. The Court of Appeal for East Africa held:

*"This discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice."*

47. Furthermore, Article 50(1) of The Constitution guarantees the right to a fair hearing. A taxation hearing conducted without notice to the paying party is unconstitutional. A taxation decision can be set aside if there is an error of principle. Proceeding *ex parte* without proof of service of the hearing notice is a fundamental error of principle.
48. The Advocate's argument that the application is merely a delay tactic holds no water when weighed against the fundamental right to be heard. As stated in ***Pithon Maina case (supra)***, where service is defective, the court has no discretion but to set aside. It is not a matter of mercy; it is a matter of right.

### **The Bill**

49. While this Court is not currently sitting as an appellate court on the quantum, I cannot ignore the sheer size of the original Bill, Kshs. 944 million, and the taxed amount, Kshs. 61 million. In ***Ratemo Oira & Co Advocates v Magereza Sacco Society Ltd [2019] eKLR***, the Court of Appeal upheld a significantly lower instruction fee in a matter involving Kshs. 8.8 billion, emphasizing that fees must be reasonable and commensurate with work done.

50. The Respondents claim the Advocate's role was limited and that he did not represent the entire Estate in the appellate proceedings. These are triable issues of taxation that require *inter-partes* argument. To allow the certificate to stand based on a one-sided presentation of such a massive claim would be unsafe and contrary to public policy regarding the protection of estates.
51. The Court comes to the inescapable conclusion that the taxation proceedings of 10 June 2024 were irregular. The irregularity stems from the failure to serve the specific Notice of Taxation as required by Paragraph 72 of the Advocates (Remuneration) Order. The email of 18 October 2023, while serving the Bill, operated as a lullaby, promising a future notice that was never delivered, thereby lulling the Respondents into a false sense of security.
52. The resulting *ex parte* taxation violated the Respondents' rights under Article 50 of The Constitution and the principles of natural justice. The dispute regarding the retainer and the collegiate authority of the administrators is substantial and must be resolved before, or as part of, the taxation process in an adversarial setting.
53. The fruits of judgment that the Advocate seeks to enjoy must be fruits of a fair judgment. A certificate obtained in the dark cannot withstand the light of judicial scrutiny.

54. Consequently, I find merit in both the Motion dated 19 November 2024 and the Motion dated 23 August 2024. I exercise my discretion to set aside the impugned orders *ex debito justitiae*.

55. It is hereby ordered:

- i. The Ruling of the Taxing Master delivered on 10 June 2024 in HCFMISC/E223/2023 is hereby set aside;
- ii. The Certificate of Taxation dated 25 July 2024 issued herein is hereby quashed;
- iii. Advocate-Client Bill of Costs dated 16 October 2023 be remitted to the Taxing Master for fresh taxation *inter-partes*.
- iv. The Taxing Master shall first determine the issue of retainer and the capacity in which the Advocate acted for the Estate before proceeding to the quantum of costs;
- v. The costs of the two applications dated 19 November 2024 and 23 August 2024 shall be costs in the cause, to be determined by the Taxing Master at the conclusion of the fresh taxation.

**Dated And Delivered At Nairobi This 13 Day Of February  
2026**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicant: Ms Mugo  
For the 1st Respondent: Mr Murgor h/b Eva Kala  
For 2nd Respondent: N/A  
For 3rd Respondent: Ms Kamau h/b Kamau Kuria SC  
Court Assistant: Lucy Mwangi