Munika t/a Munikah & Co Advocates v Nairobi City County (formerly City Council of Nairobi aka Nairobi City Council) (Civil Case E168 of 2022) [2026] KECA 436 (KLR) (5 March 2026) (Judgment)

Neutral citation: [2026] KECA 436 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL CASE E168 OF 2022

JN MULWA, J

MARCH 5, 2026

BETWEEN

SAMSON MASABA MUNIKA T/A MUNIKAH & CO ADVOCATES PLAINTIFF

AND

NAIROBI CITY COUNTY (FORMERLY CITY COUNCIL OF NAIROBI AKA NAIROBI CITY COUNCIL) ..... DEFENDANT

JUDGMENT

1. By a Plaint dated 27/07/2022, Samson Masaba Munika t/a Munikah & Co. Advocates (hereafter the Plaintiff) sued Nairobi City County Government formerly, City Council of Nairobi aka Nairobi City Council (hereafter the Defendant) seeking judgment as against the Defendant for-;

    a. The principal sum of Kshs. 44,119,988/- together with statutory interest thereon at 14% per annum from 01/01/2020 until payment in full;

    b. Interest on the principal amount at the statutory rate of 14% per annum from 01/01/2020 to 31/07/2022 amounting to Kshs. 15,941,231/- and further interest thereon at the rate of 14% per annum till payment in full;

    c. Costs of the suit and interest thereon at Court rates from the date of judgment until payment in full; and

    d. Any other relief the honorable Court may deem fit and just to grant in the circumstance.

2. It was averred that pursuant to diverse written instructions issued to the Plaintiff by the Defendant, the latter requested and or instructed the Plaintiff to act on its behalf, in a number of cases. That in compliance with the Defendant's instructions, the Plaintiff diligently and expeditiously dispatched to conclusion the Defendant's instructions to its satisfaction.

3. That after rendering professional services at diverse times, routinely in every case, the Plaintiff sent, and continued to deliver summarized work dispatch, together with signed bills for Advocate-Client costs in respect of each and every instruction acted upon. It was further averred that despite the aforestated, the Defendant failed to object to the bills within one month of delivered, pursuant to the *Advocates Act*; failed to settle the bills despite repeated demands; and remained silent for long periods, which silence was synonymous to acquiescing to the said demands, to wit, interest at 14% per annum accrued after 30 days.

4. It was further averred that between 2013 to 2015 a Taskforce on Audit of Legal Fees was set up wherein upon invitations, request for revised or final offers and submissions on pending bills to the verification committee, the latter failed to conclude payments. Nevertheless, in 2019, the Defendant wrote letters to the Plaintiff either conceding to the amounts claimed, made counter-offers stating what it considered reasonable fees or requested the Plaintiff to confirm acceptance, to wit, the imputation of the said letters constituted admissions on payable fees, compromise agreements or written acknowledgment of debt in the sum of Kshs. 44,119,989/-, of which, the Plaintiff claims.

5. The Defendant filed a statement of defence dated 22/10/2022 denying the key averments in the plaint. The Defendant avers that the parties never reached an agreement with respect to legal fees payable given that the offers and counter-offers were never accepted by the Plaintiff meanwhile the Defendant never conceded to the amount of fees payable.

6. The Taskforce on Audit of Legal Fees, was formed to vet all legal fees owed to providers whereas its actions were never meant to delay the payments due. It was further averred that in the alternative and without prejudice to the averments in the defence, in the absence of a remuneration agreement between the parties, the Plaintiff's claim is premature until the fees are taxed and a certificate of taxation issued.

7. The suit proceeded to full hearing during which only the Plaintiff called evidence in support of the averments in the plaint.

Plaintiff's Case and Evidence

8. The Plaintiff testified as PW1. He began by identifying himself as an Advocate of the High Court of Kenya, practicing in the style and name of the Plaintiff and having over 45 years' experience within the legal profession. He proceeded to adopt his witness statement dated 27/07/2022 as his evidence in chief meanwhile adduced the documents appearing at Pg. 29-547 in Plaintiff trial bundle dated 23/09/2022 as PExh.1. The gist of his evidence per his witness statement is that the Plaintiff provided professional legal services to the Defendant, as instructed and required, however despite requests for payment of Advocate-Client Costs, professional fees and disbursement communicated in writing to the Defendant, the latter refused, failed and neglected to pay as demanded.

9. On cross examination, he confirmed having been appointed to the panel of external lawyers for the Defendant, wherein he was to charge his fees as per the Advocates Remuneration Order (ARO). That there had been several correspondences between the parties on fees, in particular, proposals by the Defendant. That he eventually accepted the counter-offers, and requested for payment from the Defendant. He stated that he prepared a bill of costs which were served upon the Defendant whereas the letters in his bundle of documents were in response to the Plaintiff's letters.

10. That the Defendant received the bill of costs and wrote back either accepting the proposals or offering a counter-proposal however he confirmed having not attached any of the bill of costs to his bundle of documents. He went on to state that his claim is premised on about 814 matters he handled on behalf of the Defendant.

11. In re-examination, he iterated that he was appointed to the Defendant's panel in 1996. Since his appointment to the panel he acted on behalf of the Defendant in close to 814 matters, to wit, he wrote demand letters, requesting for payment of his fees on 15/04/2013 and received on 18/04/2013.

12. The Defendant opted not to call any evidence in the matter, to shore up the averments in its statement of defence, despite being accorded the opportunity to do so.

13. At the close of the trial, directions were taken on filing of submissions. They respective parties duly complied.

Plaintiff's Submissions

14. Counsel for the Plaintiff began his submissions by restating history of the matter, pleadings and evidence by the respective parties meanwhile condensed his submission into six (6) cogent issues. As to the nature of the suit, counsel argued that the claim is in respect of Advocate-Client costs and not a taxation. That the claim is for a liquidated amount on fees due, to wit, the issues are not a subject of taxation before a Deputy Registrar whereas this Court is endowed with jurisdiction to entertain the claim by dint of Section 45 of the *Advocates Act*. That once a valid agreement on fees exists, Section 45(6) of the *Advocates Act* bars taxation.

15. On whether there existed an Advocate-Client agreement, counsel posited that a retainer arose by dint of the Defendant's letter dated 13/11/1996 that placed the Plaintiff in the Defendant panel. That the Defendant subsequently issued instructions in multiple cases, to wit, the Plaintiff acted upon whereas the Defendant never disputed the instructions or performance of the said instructions.

16. As to the existence of an agreement on fees, it was submitted that bills and fee notes were delivered to the Defendant and after delayed responses, the latter either admitted to the amounts charged, made counter-offers on fees whereupon the Plaintiff accepted the proposed figures and made demand on payment. That the correspondences constituted written agreement on fees within the meaning of Section 45(1) of the *Advocates Act*. The decisions in Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd [2007] eKLR, Corporate Insurance Company Limited v Kang'ethe and Mola Advocates [2021] KEHC 5650 (KLR) and Omulele & Tollo Advocates v Mount Holdings Limited [2016] KECA 523 (KLR) were cited in the forestated regard.

17. Submitting on whether the Plaintiff is entitled to 14% interest on fees claimed, it was summarily argued that pursuant to Rule 7 of the Advocates Remuneration Order (ARO), an advocate may charge 14% interest per annum one month after delivery of the bill, if the claim for interest is raised before payment. That the Plaintiff complied with the above provision, to wit, his claims from interest in the sum of Kshs. 15,941,231/- as from 01/01/2020, is justified.

18. While calling to aid the decisions in Trust Bank Ltd v Paramount Universal Bank Ltd & 2 Others [2009] KEHC 4030 (KLR) and Edward Mariga v Nathaniel D. Schulter CA No. 23 of 1997 as cited in Janet Kaphiphe Ouma & Another v Marie Stopes International (Kenya) Kisumu HCCC No. 68 of 2007 (unreported), the Plaintiff equally contended that despite filing a defence, the Defendant failed to call any evidence in supported of the averments therefore, as it stands, the Plaintiff's evidence remains uncontroverted.

19. Penultimately, it was submitted that the Plaintiff complied with statutory requirements by delivering the bills, issuing demand for payment of the bills, issuing statutory notice under Section 13A of the *Government Proceedings Act* whereas the Defendant acknowledged the debts in writing as such there in no procedural bar to enter judgment in favour of the Plaintiff. In conclusion, the Court was urged to allow the suit with attendant costs.

Defendant's Submissions

20. On its part, counsel equally condensed his submission into six (6) cogent issues for the Court's consideration. Addressing the Court on the question of jurisdiction to entertain the suit as presented, while placing reliance on Section 48(1) of the *Advocates Act* and the decisions in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR and L N Ngolya & Co Adv v Jackson Muithi Kilango [2008] eKLR, counsel posited that the suit is premature and incompetent given that the Plaintiff has not proved that his bills were delivered one month prior to filing suit, whereas even if the purported schedules would be considered bills there was no evidence of service of the same.

21. As to whether there was a valid Advocate-Client Remuneration agreement, counsel argued that reading of Section 45 of the *Advocates Act*, the letters relied on by the Plaintiff were merely counter-offers and not agreements; requests to the Plaintiff to inform the Defendant whether the offers were acceptable shows that no contract was concluded; and that without acceptance not all constituent elements of a contract were proved. The decisions in Charles Mwirigi Miriti v Thananga Tea Growers Sacco Ltd & Another [2014] eKLR and Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited [2017] eKLR were relied on.

22. Submitting on whether the counter-offers constituted acceptance, while placing reliance on Halsbury's Laws of England 3rd. Edn. Vol.8 par. 132, the English decision in Hyde vs Wrench (1840) 49 ER 132 and the case of Industrial and Commercial Development Corporation v Daber Enterprises Limited [2000] eKLR, counsel posited that the counter-offers extinguished the original offers, whereas the Plaintiff was required to accept the Defendant's counter-offer to form a valid contract, of which, he failed to do.

23. Further citing the decision in Bank of Baroda (K) Ltd. V Daniel Ochieng Ogola t/a Ogola Okello & Co. Advocates [2012] KEHC 4725 (KLR) and the English decision in Brogden v Metropolitan Railways Company (1876-77) LR 2 App counsel summarily argued that silence does not constitute acceptance. In any event, the Defendant is a public entity bound by Article 201(a) of *the Constitution* on openness and accountability of public finances, to wit, there can be no acceptance without a formalized agreement in compliance with public finance law.

24. Responding to the Plaintiff's argument that failure to call evidence was fatal on the part of the defence case, counsel relied Section 107, 108 & 109 of the *Evidence Act*, the decisions in Michael Wanjohi Mathenge v Lydiah Nyaguthii Agatha & Another [2007] KEHC 2495 (KLR) and Margaret Wanjiru Ndirangu & 4 others v Attorney General [2020] KECA 683 (KLR) to submit that the burden was on the Plaintiff to prove his case as against the Defendant even where the latter fails to call evidence. That the Plaintiff failed to specifically and strictly prove the 814 cases purportedly handled on behalf of the Defendant, to wit, the sums claimed are unverified and contradictory.

25. In conclusion, it was submitted that where there was no prove of delivery of the bills pursuant to Section 48(1) of the *Advocates Act* and Rule 7 of the Advocates Remuneration Order (ARO), the Plaintiff was not entitled to claim interest at 14% per annum. Counsel urged the Court to dismiss the Plaintiff suit with costs.

Analysis and Determination

26. The Court has carefully considered the respective parties' pleadings, the evidence adduced, and the parties' written submissions., to wit, it postulates that the Issues for determination concern-;

a. Whether the Plaintiff has made out a case as against the Defendant's on a balance of probabilities?

b. Whether the Plaintiff is entitled to the reliefs sought?

c. Who ought to bear costs?

Whether the Plaintiff has made out a case as against the Defendant's on a balance of probabilities?

27. Pertinent to the determination of the said issue(s), at fore are the pleadings, which form the basis of the respective parties' case before this Court. See-; Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank [2004] 2 KLR 91. Akin to pleadings is evidence in support of the pleadings. As rightly submitted by the Defendant, the applicable law as to the burden of proof is found in Section 107, 108 and 109 of the *Evidence Act*. In Karugi & Another v Kabiya & 3 Others (1987) KLR 347 the Court of Appeal stated that-:

> " The burden on a plaintiff to prove his case remains the same throughout the case even though that burden may become easier to discharge where the matter is not validly defended and that the burden of proof is in no way lessened because the case is heard by way of formal proof....The plaintiff must adduce evidence which, in the absence of rebuttal evidence by the defendant convinces the court that on a balance of probabilities it proves the claim."

28. At the heart of the dispute is whether the Plaintiff is entitled to the judgment in the sum of Kshs. 44,119,988/- together with statutory interest thereon at 14% per annum from 01/01/2020 until payment in full; and whether interest on the principal amount at the statutory rate of 14% per annum from 01/01/2020 to 31/07/2022 amounting to Kshs. 15,941,231/- and further interest thereon at the rate of 14% per annum till payment in full, on the premise of the fact that the parties hereto had an existing Advocate-Client relationship.

29. The undisputed facts as can be gathered from the respective parties' pleadings and evidence is as follows-; that sometime in 1996, upon successful application, the Defendant placed the Plaintiff in its panel of external lawyers. To wit, subsequent to the above placement, at the behest and or instructions of the Defendant, the Plaintiff acted on behalf of the latter in various Court matters. Further, pursuant to the said instruction, either on conclusion of the instructions or otherwise, the Plaintiff sought for payment of his fees for legal work done on behalf of the Defendant.

30. It is since settled within our jurisdiction that an advocate is duly entitled to fees and compensation for work lawfully done in execution of a client's instructions. The realization of the said costs forms the purport of Section 48 of the *Advocates Act* and as read with Rule 13 of the Advocates Remuneration Order (ARO). The former which provides that-;

(1) Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.

(3) Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.

31. Whereas, Rule 13 (1) of the Advocates Remuneration Order states that-;

(1) The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.

32. Akiwumi, JA. in M G Sharma v Uhuru Highway Development Limited [2001] KECA 377 (KLR) while addressing himself to the purport of Section 48 of the Act stated-;

> " And now, if I may go back to section 48(1) of the Act, it is clear from its wording, that it only relates to proceedings for the recovery of costs. Paragraph 13 of the Order on the other hand, does not deal with the recovery of costs, but only with the taxation of costs the result of which could be the basis of a suit for the recovery of costs. And nowhere does, section 48 of the Act which deals with actions for the recovery costs, forbid the taxation of costs before any action for the recovery of costs can be instituted; and in any case, the taxation of costs under paragraph 13 of the order does not by itself, amount to a judgment. What was before the taxing officer was a taxation of costs which can be undertaken as it was done, under paragraph 13 of the order and which step is in no way inconsistent with, or forbidden by, sections 48 and 49 of the Act. In any case, the cause was not, and cannot even be said, was purported to have been, brought under section 48 of the Act. Indeed, all that section 48(1) of the Act requires to be done before a suit for the recovery of costs, is instituted, relates to the prior service of the bill of costs and not its taxation, on the client by the advocate, and not at all, to the taxation of his bill of costs. This interpretation of section 48(1) of the Act, applies with equal force to section 49 of the Act which is derived from section 48 of the Act, and which comes into play only where a suit has already been brought by way of a plaint, by an advocate for the recovery of any costs and a defence is filed disputing its reasonableness or quantum....."

33. At this juncture, it would in pertinent before proceeding to address whether Plaintiff complied with the provision of Section 48(1) of the Act, to contextualize whether the letter dated 13/11/1996 - PExh.1, constituted a "retainer" or "retainer agreement". I find it useful to quote in part the contents of the said letter, in which the Defendant duly communicated the successful placement of the Plaintiff on its panel of external lawyer's. It read in part as follows-;

> " We refer to the above and in particular to your application requesting for placement on our panel of external lawyers.
>
> This is to inform you that your application has been favourably considered and you are now on our panel. We shall be forwarding work to you and we shall expect you to charge your fees as per the Advocates Remuneration Order." (sic)

34. The PW1 testified before this Court that the said letter constituted a retainer agreement in line with Section 45(1) of the *Advocates Act* and therefore his was exempt from taxing his matters by reading of sub-section (6) of Section 45 of the Act. That the gist of the said letter was to the effect that there existed an Advocate-Client agreement, to wit, the correspondences to and from the Defendant constituted a

written agreement on fees by dint of Section 45(1) of the Act. The Defendant assailed the position in its submissions by arguing that there was no acceptance in respect of the counter-offers therefore not all constituent elements of contract were proved to thus render the correspondences an agreement on fees.

35. Section 45(1) of the Act provides that-;

(1) 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.

36. Concerning the above provision, the Court of Appeal in Omulele & Tollo (supra) while distinguishing between a "retainer agreement" and a "retainer", observed as follows concerning the latter that-;

> " The resolution of this dispute appears to us to turn on the definition of two concepts; a retainer and a retainer agreement and the rights of the parties thereto.
>
> ....., 'retainer' covers a broad spectrum. It encompasses the instructions given to an advocate as well as the fees payable thereunder. A retainer need not be written, it can be oral and can even be inferred from the conduct of the parties. However, if there is no evidence of retainer, except a statement from the advocate, which a client contradicts, the court will treat the advocate as having acted without authority from the client (see. Halsbury's Laws of England, (supra) at page 14 para 765).

37. Particularly, addressing itself to sub-section (1) of the Act, the same Court went on to address itself as follows concerning a "retainer agreement". It stated that-;

> " An agreement entered into pursuant to the above section is what can be termed as a 'retainer agreement.' As the section indicates, under such agreement, the parties 'fix' or put a cap on the advocate's instruction fee, meaning that both parties are beholden to the amount so fixed. From the foregoing it should thus be clear that the presence of a retainer is what in turn gives rise to the retainer agreement. In other words, only when the engagement and the terms thereof have been agreed upon, can the same be reduced into writing. It also follows that for the retainer agreement to be valid and binding, the same must have been put in writing and signed by the client and or his agent. It is therefore erroneous as submitted by counsel for the respondent that retainer and retainer agreement mean one and the same thing. The learned Judge also seem to have fallen in the same error in equating a retainer with a retainer agreement when she held that there was a retainer agreement in this case in line with Section 45 of the Act. We would also agree with counsel for the appellant that what was before her for determination was whether there was a retainer between the parties and not whether there was a retainer agreement. In introducing the issue of retainer agreement in the mix, the Judge chartered an unpleaded path, which was an error.

> As with any other agreement, the onus of proving the existence of the retainer agreement lies with he that wishes to enforce it. This is in line with the ordinary rules of contracts and evidence. (See Kenya National Capital Corporation Limited v. Albert Mario Cordeiro & Another [2014] eKLR and Section 107 of the *Evidence Act* Cap 80). Under the proviso to Section 45 (5) of the Act, an advocate who is a party to a retainer agreement and who has acted diligently for the client is entitled to sue and recover for the whole retainer fee should his client default in payment thereof. Infact, as long as the advocate has been diligent, his entitlement to the fixed sum is so outright that he need not tax his costs nor give statutory notice to the client prior to his pursuit of the said fee. Consequently, it behooves such advocate to ensure that the retainer agreement once made, is reduced into writing.

38. Consequently, can it be stated that the letter dated 13/11/1996 consisted of a "retainer agreement" as posited by the Plaintiff? I believe not. I construe the said letter to encapsulate the formal communication by the Defendant, notifying the Plaintiff that it has formally retained the firm of Munikah & Co. Advocates, to offer, legal services amongst the panel of its external lawyer. The letter neither specifies the amount on instruction fees nor sets an all-inclusive figure, for each brief the Plaintiff would take up at the behest of the Defendant.

39. It is not in dispute that there existed an Advocate-client relationship, to wit, parties discussed fees in respect of matters taken up by the Plaintiff, whereas, the latter equally appeared and tendered documentation before the Taskforce on Audit of Legal. The letter dated 13/11/1996, as read alongside the bundle of correspondences appearing in PExh.1, cannot be considered to be a "retainer agreement".

40. The bulk of the correspondence consisted of discussions relating to the Plaintiff's fees for various matters and not "a retainer agreement" within the meaning of Section 45(1) of the Act, to wit, Section 48 of the Act would be applied given the argument advanced by the Plaintiff. In any event, the letter dated 13/11/1996 was express that the Plaintiff's fees, for every matter, was to be charged as per the Advocates Remuneration Order (ARO). Thus, the parties had every intention to be bound by the ARO, on chargeable fees, and not a predetermined figure on fees. In the absence of the latter, the Plaintiff's argument premised on sub-section (6) of Section 45 cannot hold.

41. In light of the above, can the suit sustain where there exists no "retainer agreement" and the Defendant has filed a defence disputing fees claimed by the Plaintiff? Section 49 of the *Advocates Act*, in the above respect, offers some guidance. It provides that-;

> Where, in the absence of an agreement for remuneration made by virtue of section 45, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof—
>
> (a) no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;
>
> (b) unless the bill of costs on which the suit is based is fully itemised, the plaintiff shall file a fully itemized bill of the costs within fourteen days from the date of service of the defence, or such further period as may be allowed by the court, and shall serve a copy thereof on the defendant, and, if the total amount of such bill exceeds the amount sued for, the prayer of the plaintiff shall, subject to the court's pecuniary jurisdiction, be deemed to be increased accordingly and all consequential amendments to the pleadings may be made;
>
> (c) no court or filing fee shall be payable on filing a bill of costs required by this section, but, if thereby the amount for which judgment is prayed in the plaint is deemed to be increased under

paragraph (b), the plaintiff shall pay to the court such court or filing fee as may be appropriate to the increase; and

(d) at any time after the bill of costs has been filed, and before the suit has been set down for hearing, any party to the action may take out a summons for directions as to whether such bill should be taxed by the taxing officer before the suit is heard.

42. Here, despite the requirement of Section 48(1) of Act, on service of an advocate's bill for such costs one month before filing a suit to recover costs, aside, my understanding of Section 49 of the Act, is that where there is no retainer agreement and an advocate files an action for recovery for costs, taxation of an advocate's bill of costs is intrinsic, to entry of judgment in the said suit. It is apparent the fees payable to the Plaintiff was in part disputed, going by the correspondences adduced in PExh.1 alongside the defence filed in the instant matter. Therefore, it was incumbent upon the Plaintiff, within fourteen (14) days upon receipt of the defence, to file and serve a fully itemized bill on disputed costs, manifest from the letters in PExh.1.

43. To the foregoing end, the Court concurs with Khamoni, J. rendition, in John Mark Nyaga Kamunyori t/a Kamunyori & Co. Advocates v Development Bank of Kenya [2007] KEHC 2514 (KLR), wherein the Court stated-;

> " More closely, it means that under Section 49 if no defence is filed, or if one is filed but does not dispute the reasonableness or quantum in the plaint, the requirements in paragraphs (a) to (d) are not necessary. It also means that Section 49 covers all suits including those where the subject matter fall inside Section 45, that is where there is agreement for remuneration and the advocate wants to enforce that agreement, for example. Section 49 therefore covers cases falling under Section 48 provided that cases falling under Section 48 must also fulfill the requirements in Section 48 such as service of the bill of costs to the client one month before filing the suit. Section 49 is therefore the one under which the instant suit should be said filed; because pursuant to Section 49, an advocate's suit for payment of costs may be based on the full amount of his untaxed bill of costs under Section 48, or be based on already taxed/assessed costs under Section 51 (2), or be based on an agreement under Section 45. Those are three categories of cases under the *Advocates Act* and in each of those three categories, once the suit has been filed, and I mean a substantive suit instituted by a plaint, the Plaintiff therein may apply for summary judgment in the normal manner under relevant provisions of the *Civil Procedure Act* and its rules where such an application is justified for the normal handling under the *Civil Procedure Act*."

44. Penultimately, it would be critical to observe that the suit as presented was hinged on Section 45 as read alongside Section 48 and 49 of the *Advocates Act*, to wit, the same has been discussed by this Court, as such. That said, the Plaintiff has tacitly argued via his submissions that delayed responses to his letters and the Defendant's counter-offers on fees in part translated to admission of the amounts charged whereupon the Plaintiff accepted the proposed figures and therefore made demand on payment.

45. I have reviewed the bundle of correspondence appearing in PExh.1, consisting of a plethora of letters from the Defendant dated 15/08/2015, 5/12/2019, 10/12/2019 and 11/12/2019 responding to the Plaintiff's letters dated 13/04/2013. Unfortunately, the Court has not been accorded the benefit of the latter letters.

46. However, what I garner from the responses of 5/08/2015, 5/12/2019, 10/12/2019 and 11/12/2019, by the Defendant, is that, the Plaintiff letters concerned request on fees and disbursement for the various matters handled by the Plaintiff on behalf of the Defendant.

47. Notably, vide some of the letters dated 5/08/2015, 5/12/2019, 10/12/2019 and 11/12/2019, the Defendant appears to offer counter proposal to the Plaintiff letters dated 13/04/2013, whereas in others, the Defendant seems to concur the with the Plaintiff's demand on fees, and I quote verbatim as being "in accordance."

48. While in some of the letters, the Defendant deems the Plaintiff's demand on fees as being in accordance, the same would tacitly constitute, a contractual acquiescence to debt, due to acknowledgment and compromise on the respective fees. Nevertheless, it be hooves reminder, the provision of Section 49(a) of the Advocate Act, is explicit that "no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer".

49. Thus unless, the Defendant consents to the amounts in the correspondences wherein it deems Plaintiff demand on fees as being in accordance, the Court is hamstrung to enter judgment on the said acknowledgments and compromises. The would be appropriate approach by the Plaintiff was to move the Court for judgment on admission, with respect to the Defendant's letters where the fees were deemed to be "in accordance". As to the disputed sums, where the Plaintiff failed to acknowledge the Defendant's counter-proposals, I believe I need not belabor on the exhortation of Section 49 of the Act

50. In the circumstance, the instant suit cannot sustain in light of the mandatory requirement in Section 49 of the Act and or the procedural deficiencies identified in respect of the provision, to wit, judgment as sought in the suit cannot be entered in the absence of a retainer agreement, consent in respect of the undisputed fees or certificate of taxed costs. Or stated another way, under Section 107 of the *Evidence Act*, the burden of proof lay with the Plaintiff and because his evidence did not support the facts pleaded, he failed as the party with the burden of proof.

51. Consequently, this Court finds that the Plaintiff's suit lacks merit and dismisses it with no order as to costs, given the nature of the dispute. In any event, the Plaintiff's cause is not lost, he can still proceed to tax his various bills of costs or move the Court appropriately on costs that are "in accordance" notwithstanding the dismissal of the instant suit.

Orders accordingly

DELIVERED DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF MARCH, 2026.

.....

JANET MULWA.

JUDGE