



**Ohayo & Company Advocates v Kilimani Hospital (Civil Miscellaneous Application E094 of 2025) [2026] KEHC 3964 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3964 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL MISCELLANEOUS APPLICATION E094 OF 2025**

**A MABEYA, J  
MARCH 25, 2026**

**BETWEEN**

**OHAYO & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**KILIMANI HOSPITAL ..... CLIENT**

**RULING**

1. This ruling determines two Motions both dated 24/9/2025 by each of the parties.
2. By a Motion on Notice dated 24/9/2025, the applicant applied for Judgment for Kshs. 166,918/- together with interest thereon at 14% from 14/7/2025 against the respondent. The Motion was brought under the provisions of section 51(2) of the *Advocates Act*, Cap 16 Laws of Kenya and Section 3A of the *Civil Procedure Act*.
3. The basis for seeking judgment was that it was in terms of a Certificate of Costs dated 14/07/2025.
4. In the Supporting affidavit sworn by Ohayo Cynthia Mariam on 24/09/2025, it was contended that she represented the respondent and consequently had her costs taxed as per the Certificate of Costs dated 14/7/2025. That the respondent has to-date not settled the said Certificate.
5. The Motion was opposed vide a replying affidavit sworn on the 13/10/2025 by Nick Matete, the respondent's director in which he deposed that there is a pending challenge to the applicant's Certificate of Costs.
6. That the respondent was never served with the Advocate-Client Bill of Costs dated 27/5/2025 or the Notice of Taxation and was therefore unaware of the taxation proceedings and further that any service as alleged by the applicant was defective and improper.
7. That there exists a retainer agreement between the applicant and respondent that ousts the jurisdiction of the Court to tax the Advocate – Client Bill of Costs dated 27/5/2025.



8. That the taxation proceedings and ruling having proceeded ex-parte in its absence, this denied it an opportunity to be heard contrary to the rules of natural justice and Article 50 (1) of the Constitution. That consequently, the applicant's Motion ought to be dismissed and the Advocate – Client Bill of Costs remitted for taxation afresh.
9. The second Motion was by the respondent dated 24/9/2025. It sought that the Taxation of the Advocate Client Bill of Costs dated 27/5/2025 plus the ruling and orders delivered on the 14/7/2025 and the subsequent Certificate of Costs be set aside. That consequently, the Advocate – Client Bill of Costs dated 27/5/2025 be remitted back for fresh taxation.
10. The Motion was said to be brought under Article 50 (1) & 159 (2) of the Constitution, sections 1A, 1B, 3A of the Civil Procedure Act, Order 5 Rule 3, Order 5 Rule 22 (B) (1), (2) & (4), Order 10 Rule 11, Order 12 Rule 7, Order 21 Rule 1, Order 22 Rule 22 & Order 51 of the Civil Procedure Rules, Section 45 of the Advocates Act, Paragraph 13 (2) of the Advocates (Remuneration) Order. It was anchored on the grounds set out therein as well as the supporting affidavit of Nick Matete.
11. It was deposed that the respondent was never served with the Advocate – Client Bill of Costs dated 27/5/2025 or Notice of Taxation and the respondent was thus unaware of the taxation proceedings. That the purported service was defective, irregular and incapable of conferring notice as required by law.
12. That there exists a Retainer Agreement between the parties which expressly stipulating the amount of fees payable in the matter from which the present taxation proceedings arose.
13. That the applicant shall commence execution proceedings against the respondent which will result in its moveable properties being carted away unless the Taxation Ruling and Certificate of Costs are set aside whereas the applicant stands to suffer no prejudice if the instant application is granted as the matter will be heard and determined on merit.
14. From the record, I have not come across any response by the applicant to the respondent's Motion.
15. In determining the Motions before me, I will start with the respondent's Motion dated 24/9/2025. A clear reading and understanding of the respondent's Motion shows that it is challenging the Taxation of the Client Bill of Costs dated 27/5/2025 and the subsequent ruling and Certificate of Costs. It wants the Bill of Costs to be remitted back to the taxing officer to tax it afresh. In simple terms, the respondent's Motion is a reference.
16. Paragraph 11 of the Advocate's [Remuneration] Order compressively provides for a procedure to be conformed with by a party desiring to impugn a Taxing Officer's decision on a Party and Party bill of costs. It bears repeating that the procedure is mandatory. The section provides: -
  - “ 1. Should any party object to the decision of the taxing officer, he may, within 14 days after the decision, give notice in writing to the officer of the items of taxation to which he objects.
  2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items, and the objector may, within fourteen days from the receipt of the reasons, apply to a judge by Chamber summons, which shall be served on all parties concerned, setting out the grounds for objection”



17. Firstly, a reference is by way of a Chamber Summons and not Notice of Motion as presently made by the respondent. Secondly, the respondent averred that the impugned ruling was delivered on the 14/7/2025. As such, the 14 days for filing a reference against the Taxing Officer's decision was to lapse and indeed did lapse on 28/7/2025.
18. The present application is dated 24/9/2025 and seemed to have been filed on the same date, therefore, out of time. This Court has no jurisdiction to entertain a reference filed out of time without the leave of the Court. I am mindful that the respondent is complaining that it was never served with either the Bill of Costs or the Taxation Notice. That may explain the failure to pursue the reference in accordance with the provisions of the law cited above. That being the case, the proper procedure would have been for the applicant to apply to the Taxing Master to set aside the alleged ex-parte proceedings and not to come to this Court as it did.
19. In view of the foregoing, and mindful of the provisions of Article 50 of *the Constitution* on the right of a party to fair hearing, I will not determine the respondent's Motion. I will strike it out and direct it to go the Taxing Master for appropriate orders.
20. Having struck out the respondent's Motion, I am left to consider the applicant's Motion dated 24/9/2025. I have seen a copy of the Certificate of Costs issued on the 14/7/2025. It is for Kshs. 166,918/- only.
21. Section 51(2) of the *Advocates Act* provides: -

“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.”
22. From the foregoing, it is clear that an Advocate is entitled to judgment on the amount certified after a taxation of an advocate-client bill of costs. That Certificate must not have been varied or set aside. In the present case, the respondent alleged that it was not aware of the taxation proceedings. I have struck its misconceived attempt to set aside the orders allegedly made ex-parte. The advocate did not deny the allegations that the taxation proceedings proceeded ex-parte.
23. In my view, is it be that the taxation proceedings proceeded ex-parte as alleged by the respondent and not denied by the advocate, it cannot be positively stated that the Certificate of Costs has not been varied or set aside. It is subject to further proceedings before the Taxing Master by way of either setting aside proceedings or any other appropriate procedure.
24. In the circumstances, I am unable to make any finding on the Motion by the advocate. It has to await a decision by the Taxing Master on the any setting aside proceedings that may be undertaken by the respondent. The waiting shall not be indefinite. If no proceedings are undertaken by the respondent as such before the Taxing Master within 45 days of the date of this ruling, the advocate will be at liberty to list that Motion for determination.
25. Accordingly, the respondent/client's Motion dated 24/9/2025 is hereby struck out with costs to the applicant while the determination of the applicant/advocates' Motion dated 24/9/2025 is suspended for 45 days in terms of paragraph 24 of this ruling.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF MARCH, 2026.**

**A. MABEYA, FCI Arb**



**JUDGE**

