Muite (SC) v Diesel Care Limited (Miscellaneous Application E053 of 2024) [2026] KEELC 2121 (KLR) (16 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2121 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MISCELLANEOUS APPLICATION E053 OF 2024

MN KULLOW, J

APRIL 16, 2026

BETWEEN

PAUL KIBUGI MUITE (SC) ..... ADVOCATE

AND

DIESEL CARE LIMITED ..... CLIENT

(Being a reference from the ruling delivered on July 2025 by the Honourable Judith Omollo (Deputy Registrar) on taxation of the advocate/Applicant's Bill of Costs dated March 14th 2024)

RULING

Brief facts

1. The applicant herein filed advocate -client bill of costs dated 14th March 2024 as between himself and the Respondent on the basis that he had represented the client in Supreme court civil application No E008 of 2023; Megvel Cartons Limited Vs Diesel Care Limited & 2 others.

2. The bill of cost was heard and determined by Honourable Judith Omollo on the 11th July 2025 whereupon the same was struck out necessitating the filing of this instant application challenging the decision seeking to review /setting aside of the ruling dated 4[11th] July 2025 on the grounds that;

    a. The taxing master misdirected herself when she struck out the-advocates bill of costs and acted contrary to the established as well settled principles of the law on taxation.

    b. That taxing master erred in both in law and fact by disregarding the fact that the Applicant was instructed by the Respondent through its advocates on record Kibera Maina & Associates to act in supreme court petition E003 OF 2023 and to offer legal representation and advice throughout the appellate proceedings.

    c. That the applicant's engagement continued with the instructions, knowledge participation and implied authority of the Respondent who was copied in all correspondences.

d. The taxing master erred in both law and fact by failing to take into account the conduct of the Respondent and the counsel on record throughout the appellate proceedings before the Apex court which constituted sufficient acquiescence to and ratification of the applicant's continued legal services.

e. The taxing master erred in both law and fact by disregarding the averment by the Respondent though not proved of the payment of sum of Ksh 15,000,000.00 in settlement of advocate fees on account of services rendered which goes to show that indeed, the Respondent is aware that the applicant rendered his services and acted on instructions from the Respondent.

f. The taxing master fundamentally misapprehended the nature and the circumstances under which the professional services were rendered which created a binding de facto advocate client relationship recognized and enforceable in law. The retainer could be inferred from the fact that the applicant acted on behalf of the Respondent.

g. The taxing master erred in her strict implementation of a formal written retainer as the only proof of an advocate -client relationship which misapplied contrary to binding judicial precedents that recognize implied and/or de facto retainers.

h. The applicant is entitled under section 51(2) of the *advocates Act* to have his fees paid where services were rendered hence the taxing master erred in her decision that there was no advocate client relationship which allowed the client having taken benefit of an advocate's representation to turn around and say there were no instructions in such a weighty matter as such as the one before the apex court.

i. The entire decision of the taxing master is evidently unreasonable and injudicious.

3. The Respondent/client did not put in any response to the application.

4. The court directed the application was canvased by way of written submissions and only the applicant as a t the time of writing this ruling had complied by filing submissions dated 6th February 2026.

5. The court also issued instructions that the ruling herein would apply to Miscellaneous Application E054 OF 2024, E055 OF 024 and E056 OF 2024

Issues raised in the applicant's submissions.

Whether there existed an advocate client relationship between the Applicant and the Respondent.

Counsel argued that there was a valid retainer agreement as between the applicant and the Respondent being that the agent acting on behalf of the Respondent in this case their advocate on records wrote the applicant emails dated 15th March ,2018 and 16th March 2018 instructing them on behalf of the Respondent to be their lead counsel in Supreme court civil application No E008 of 2023; Megvel Cartons Limited Vs Diesel Care Limited & 2 others. That the Respondent herein was much aware of their involvement in the matter as the applicant appeared several times in the supreme court representing them and that the silence and failure to object by the Respondent all through the proceedings implied through conduct that they were in the knowledge of the applicant representing them.

Counsel indicated that courts had decided that a retainer agreement need not be in writing but the same can be discerned from the conduct of the client. That further when a client authorizes counsel to come on record, the same constitutes a retainer. Counsel relied on several cases including the case of Ochieng Onyango Kibet & Ohaga Advocates -Vs- Akiba Bank (2007) eKLR Ahmednasir Abdikadir

& Co Advocates Vs National Bank Kenya Ltd. (2007) to define what the court had indicated a retainer to be.

Counsel further submitted that the act of appearing in the apex court, requesting for pleadings and undertaking preparatory work could not have been done without direct instructions from the Respondent.

Whether the Respondent was the instructing and liable client for purposes of the advocate -client bill of costs

On this the applicant submitted that the instructions came from the Respondents whether directly or through the advocates on record and that they had produced sufficient evidence demonstrating the applicant had been engaged by the Respondent and that the burden now shifted on the Respondent to prove they had not engaged the applicant.

Counsel submitted that the bill of costs ought to be reinstated for taxation or remitted to be taxed by a different officer having submitted on the grounds as set forth.

Analysis and determination

6. Having looked at the application and submissions, the issue for determination is whether the taxing master erred in law and principle as to justify interference with the decision of Taxing officer 's ruling dated 11th July 2025

7. It is trite law that Courts would not generally interfere with the decision of a Taxing master. In Republic -Vs- Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others [2006] eKLR; the Court stated, "The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.... The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle. Of course, it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. ....."

8. The applicant's contention is that the taxing master failed to consider and appreciate the law on implied retainers in her ruling indicating there were no instructions issued directly from the client despite the correspondences indicating otherwise.

9. I have perused the correspondences as between the Respondent's advocates Kibera Maina & Co Advocates and the applicant herein that has been attached in the applicant's supporting affidavit. There is a letter from the advocates dated 6th March 2023 forwarding the pleadings that is petition, application, submissions and case digest to the applicant. The applicant also wrote back acknowledging the receipt and further going ahead to advise on matters concerning the case. In her ruling the taxing master did in fact rely on the letters mentioned but went ahead to indicate that the instructions to the applicant herein were from the Respondent's advocate and not the Respondent. The Respondent's advocate in issuing instructions wrote they needed the applicants to lead in the matter at the supreme court. This in my view is an instruction to act on behalf of the Respondent as the term lead here implies there were to be the lead counsel having conduct of the matter and hence why the advocates

needed to have the applicant give a go ahead on all the documents filed on behalf of the Respondent on. Whether the advocates appeared at the supreme court or not is of little implication as they could have participated in other areas which in this case has been seen to have been leading in issuing instructions and advisory on the pleadings filed.

10. The Respondent did not at any point object to the applicant being involved in the matter and there is no way the counsel on record would have engaged a different advocate on such an important matter with such great interest at the supreme court without the knowledge of the Respondent. In this case the conduct of both the advocates who were agents of the Respondent and the Respondent point to the fact that there was a retainer agreement even though it was not in writing. It is a fact that there was no written retainer between the advocate and client, but instructions can be inferred from the conduct of the parties. My respectful view is that the taxing master erred in finding that there were no instructions given to the advocate. I am in agreement with the decision by Njagi J. in the case of NRB HCCC No .416 of 2004 Nyakundi & Company Advocates -Vs- Kenyatta National Hospital Board where he explained that a retainer need not be in writing, unless, under the general law of contract, the terms of the retainer or the disability of a party to it make writing requisite. At paragraph 103, the Judge stated "Even if there has been no written retainer, the court may imply the existence of a retainer from the acts of the parties in the particular case " I also bear in mind the observations of Scott L.J in Groom versus Crocker [1938] 2 All ER 394 413 where he stated that:-"A solicitor, as a professional man, is employed by a client just as much as is a doctor or an architect or a stockbroker, and the mutual rights and duties of the two are regulated entirely by the contract of employment. The relationship is normally started by a retainer, but the retainer will be presumed if the conduct of the two parties shows that the relationship of solicitor and client had infact been established between them

    In view of the foregoing, this Court finds that the taxing master erred in law and principle in her ruling dated 11th July 2025 and hereby make the following orders

    a. The ruling of the taxing master dated 11th July 2025 is hereby set aside

    b. The bill of costs dated 14th March 2024 to be remitted back for fresh taxation by a different taxing officer.

    c. Each party to bear their own costs.

    d. The ruling rendered in this matter is hereby to apply to Miscellaneous Civil Application E054 OF 2024, Miscellaneous Civil Application E055 OF 2024 and Miscellaneous Application E056 OF 2024.

    It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 16TH OF APRIL 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Ms. Mwongela for the Applicant

Mr. Kibera for the Respondent

Philomena W . Court Assistant

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