



Ecobank Kenya Limited v GM Gamma Advocates LLP (Miscellaneous Civil Application E451 of 2025) [2026] KEHC 5881 (KLR) (Commercial and Tax) (29 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5881 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E451 OF 2025**

BK NJOROGE, J

APRIL 29, 2026

BETWEEN

ECOBANK KENYA LIMITED CLIENT

AND

GM GAMMA ADVOCATES LLP ADVOCATE

RULING

1. The Applicant filed the Notice of Motion dated 6th May 2025 seeking the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. The court to issue a declaration that a binding agreement on fees exists between the Applicant and the Respondent relation to the legal services rendered in connection with Account Numbers 6682xxxxxx and 66820xxxxx.
 5. Upon the finding in prayer (4 above) the Court to invoke its supervisory jurisdiction under Article 165(6) and (7) of *the Constitution* of Kenya to call for, review, and quash all such taxation proceedings instituted by the Respondent in respect of legal services rendered to the Applicant in connection with Account Numbers 6682xxxxxx and 66820xxxxx, for being without jurisdiction and instituted in breach of Section 45(6) of the *Advocates Act*, and to award the costs of the unlawfully instituted taxation proceedings to the Applicant.
 6. A permanent injunction does issue restraining the Respondent, whether by itself, its agents, or its advocates, from instituting or continuing with any taxation proceedings, or from enforcing



or acting upon any orders obtained in respect of legal services rendered to the Applicant in relation to Kiwipay Account Numbers 6682xxxxxx and 66820xxxxx held with the Applicant.

7. Costs of this Application and those of the individual taxation proceedings be awarded to the Applicant.
2. The Application was supported by the Affidavit of John Wambugu. He stated that in 2022 and 2023, the Applicant was joined as a Defendant in multiple suits concerning disputes over funds held in Kiwipay Kenya Limited's accounts. This prompted it to engage the Respondent to provide legal representation on a case-by-case basis. During the course of these matters, the parties negotiated legal fees through both verbal discussions and correspondence. This culminated in an Advocate-Client agreement embodied in a Final Fee Note dated 8th November 2022. The Respondent proposed a lump sum of USD 930,000.00 for all services rendered in the Kiwipay matters. The Applicant accepted the offer, and pursuant to Kiwipay Kenya Limited's indemnity obligations, the agreed fees were fully settled directly by Kiwipay. Thus, constituting a binding fee agreement within the meaning of Section 45 of the [Advocates Act](#).
3. Notwithstanding the existence of this agreement and full settlement, the Respondent in 2024 purported to repudiate the same and proceeded to issue additional fee notes. It also instituted multiple taxation proceedings against the Applicant in respect of the same matters. The Applicant contends that these proceedings are frivolous, vexatious, and an abuse of the Court process. That they seek to reopen settled issues and result in unjust enrichment. That this is contrary to Section 45(6) of the [Advocates Act](#) which bars taxation where a fee agreement exists.
4. It was further argued that the Respondent has not sought to set aside the agreement under Section 45(2). That the continued taxation proceedings, if not stayed, will expose the Applicant to double liability, unnecessary legal costs, and undermine the objectives of Sections 1A and 1B of the [Civil Procedure Act](#).
5. In reply, the Respondent filed the Replying Affidavit, sworn on 20th May, 2025. It was deponed that the Applicant's own averments reveal a fundamental contradiction: while asserting that the USD 930,000 paid by Kiwipay covered all matters relating to Kiwipay accounts, it simultaneously contended that the Respondent ought to have pursued party-and-party costs against Kiwipay to recover its fees. This position is inherently illogical and self-defeating, as it suggests a double recovery for the same services. It underscores the absence of any comprehensive fee agreement extending beyond the four matters specified in the fee note dated 8th November 2022.
6. Further, the Applicant only raised the alleged existence of a broader fee agreement after the Respondent filed its Bills of Costs, having never previously alluded to such an arrangement. Had such terms been intended to apply to future instructions, they ought to have been clearly communicated at the outset. The Respondent maintained that it would not have accepted instructions had it known that payment of legal fees was not contemplated. This is particularly as contingency-based fee arrangements are unlawful and unenforceable in this context.
7. Moreover, the Applicant's own correspondence acknowledged that fees were due to the Respondent, albeit suggesting recovery through party-and-party taxation, which does not extinguish an Advocate's right to Advocate-Client fees. The failure to produce any evidence of a valid fee agreement further weakens the Applicant's position. Ultimately, the Respondent contended that the Applicant's actions are aimed at frustrating and delaying the taxation process. This is to assist it to evade its obligation to pay for legal services duly rendered.



Issues for determination

8. The Court has considered the Application, the response thereto, and the written submissions. The issues for determination are;
 - a. Whether there was a binding agreement on fees between the parties.

Analysis

9. It was the Applicant's position that there was an agreed fee in the sum of USD 930,000.00. This Fee Note reflected a globally negotiated and all-inclusive fee arrangement. It captured the entirety of the Bank's instructions and legal representation concerning the Kiwipay matters, both current and anticipated.
10. Consequently, the express reference to an "agreed fee" and a "cumulative Fee Note for all the matters handled" gives the Final Fee Note binding effect under Section 45(1) of the *Advocates Act*, which recognizes written fee agreements as enforceable contracts. Once such an agreement exists, taxation is precluded unless the agreement is challenged for being harsh or unconscionable which the Respondent has neither pleaded nor proved. The law favors certainty and finality in such arrangements.
11. On the other hand, the Respondent averred that the fee note of 8th November, 2022 did not extend to any other matter, outside the four matters specified in it. That none of the impugned Bills of Costs in the taxations was covered thereunder
12. Section 45 of the *Advocates Act* provides as follows:

- “(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.”

13. Was there an agreed fee by the parties with regard to legal representation? The Court finds it necessary to reproduce the email to Ecobank Kenya Limited from Kiwipay Kenya Ltd.

Email: Alleke-Legal@ecohank.com

Re: Ecobank's Legal Costs Incurred in Court Matters Related To Kiwipay Kenya Limited
Bank Account Nos. 668200xxxx, 6682xxxxxx and 66820xxxxx.



Reference is made to the above matter and to our discussions with your lawyers on record with respect to settlement of their legal fees

By this letter, we confirm that further to the Consent dated 10- November 2022 adopted as a Court Order by Justice David Majanja (on 14- November 2022 in HCCOMMPetition No. E010 of 2022, we hereby ratify and authorize the payment of United States Dollar Nine Hundred and Thirty Thousand (USD 930,000) from the aforementioned Bank Accounts in settlement of Ecobank Kenya Limited's Advocate's (i.e., Messrs G.M Gamma Advocates I.LP) Legal Fees_ amounting arising from the following court matters in which the Bank was represented

- Milimani Miscellaneous CR Application No. E039 of 2022 Assets Recovery Agency Vs Ecobank Limited & Kiwipay Kenya Limited (Interested Party)

- High Court Miscellaneous Application No. E028 of 2022 Assets Recovery Agency Vs Kiwipay Kenya Limited & Ecobank Limited (Interested Party)

- High Court Miscellaneous Application No. E037 of 2022 Assets Recovery Agency Vo Kiwipay Kenya Limited & Ecobank Limited (Interested Party)

- High Court Commercial & Tax Division Petition No. E010 of 2022 Maina Stephen Njenga vs Vi Kiwipay Pte Limited & 3 Others

However, the payment of the said sum shall be subject to a rebate of Kenya Shillings Forty Million (Kshs. 40,000,000/-) which sum shall be transferred by your Advocates to a Bank Account as shall be directed by us.

We therefore confirm that there is no claim whatsoever that the Company has or intends to raise against Ecobank Kenya Limited and/or G.M Gamma Advocates LLP arising out of the payment of United States Dollar Nine Hundred and Thirty Thousand (USD 930,000) in settlement of the latter's justified legal fees.

Yours faithfully,

Kiwipay Kenya Limited

Director

14. From the above correspondence, it is this Court's considered view that while the letter refers to the Bank Account Nos. 6682xxxxxx and 66820xxxxx, it was also clear that the amount of USD 930, 000 was to cover the four Court matters mentioned in the above letter.

15. Further the correspondences at Exhibit GO-4, dated 4th November 2022 reads:

We confirm we received instructions and acted on behalf of Ecobank Kenya Limited in the matters captioned in the subject of this email i.e., Nairobi HC ACEC No. E028 OF 2022, HC ACEC No. E037 of 2022, Assets Recovery Agency vs Kiwipay Kenya Limited & 3 others as well as in High Court Commercial & Tax Division Petition No. E010 of 2022; Maina Stephen Njenga & 2 others vs Kiwipay PTE Limited & 3 others and Milimani Misc. Cr Application No. E039 of 2022; Assets Recovery Agency vs Kiwipay Limited & Ecobank Limited (interested party) in which the cumulative value of the subject matter is USD 19, 481, 118.9/=

Pursuant to the foregoing, and taking cognizance of the value of the subject matter, we propose to charge a discounted legal fee of USD 930,000/= which in our view is fair.



Kindly favour us with your response to enable us to share our fee note with you.

16. This led to the response by Kiwipay's advocates who responded as follows;

“We have consulted our clients and confirm that our clients are agreeable to settling your legal fees in the sum of USD 930,000 as proposed. Do share your Fee Note for settlement.”
17. It is the Court's understanding that from the above correspondence, the matters discussed were only four, and the fee of USD 930, 000 was in relation to these four Court matters
18. Therefore, the other matters that is Taxation Cause No. Misc. E1060 of 2024; Taxation Cause No. Misc. E1061 of 2024; Taxation Cause No. Misc. E1062 of 2024; Taxation Cause No. Misc. E008 of 2025; Taxation Cause No. Misc. E192 of 2025; Taxation Cause No. Misc. E250 of 2025; Taxation Cause No. Misc. E252 of 2025; Taxation Cause No. Misc. E253 of 2025; and Taxation Cause No. Misc. E246 of 2025 were not covered under the agreement.
19. Section 45(6) of the *Advocates Act* provides that:

“...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.”
20. The interpretation of Section 45(6) of the *Advocates Act* is laid down in the case of Corporate Insurance Company limited V Kang'ethe and Mola Advocates (2021) EKLR it was held that:

‘...settlement of the Advocates fee note constituted an agreement on the terms proposed in the fee and based on the first principle of the law of contract, the offer by the advocates contained in fee was accepted by the applicant who paid the consideration by way of settling it. If there is any outstanding interest, the Advocate are entitled to claim it through a suit for recovery. In other words, I find that the issue of fees was duly settled when the fee note was paid as such, the deputy Registrar does not have jurisdiction to tax the bill under section 45(6) of the *Advocates Act* as the settlement constitutes as an agreement between the parties. The consequence of the above findings is that the applicant's application dated 14th January 2021 is allowed and the advocates' Bill of costs dated 11th November 2020 be and is hereby being struck out.’
21. Guided by the above authority, the fee agreed on was with regard to the mention four court matters (Nairobi HC ACEC NO. E028 OF 2022, HC ACEC No. E037 of 2022, Assets Recovery Agency vs Kiwipay Kenya Limited & 3 others as well as in High Court Commercial & Tax Division Petition No. E010 of 2022; Maina Stephen Njenga & 2 others vs Kiwipay PTE Limited & 3 others and Milimani Misc. Cr Application No. E039 of 2022; Assets Recovery Agency vs Kiwipay Limited & Ecobank Limited (interested party)) and not the other matters which are subject to taxation through the Bill of Costs.
22. In light of the above, the Court finds that the Applicant's Application fails and is hereby dismissed.
23. As to costs, the same lie at the discretion of this Court. Costs ordinarily follow the event. This means the successful party is entitled to costs, unless otherwise stated. No arguments or reasons have been advanced to deny the successful Respondent the costs of the Application. Thus, the costs are awarded to the Respondent.



Determination

24. The Applicant's Application by way of a Notice of Motion dated 6th May, 2025 is hereby dismissed for lack of merits.
25. The costs are awarded to the Respondent.
26. It is so ordered.
27. The file is marked as closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF APRIL, 2026.

NJOROGE BENJAMIN. K

JUDGE

In the presence of: -

Mr. Munene Emmanuel for the Applicant.

Mr. Ahmed Nassir SC. With Mr. Amol for the Respondent.

Mr. John Paul - Court Assistant.

