

or the same be dealt with as the court may consider appropriate in the circumstances.

c) The costs of this Application be borne by the Respondent.

3. This Application was supported by the Affidavit of **Thomas O. Moindi**, an Advocate. He contended that the learned Taxing Master erred in law and fact by failing to recognize sufficient evidence that the Applicant prepared the lease dated 8th July 2020. That the Learned Taxing Master erred in disregarding the binding terms of the letter of offer dated 10th March 2020 and the Respondent's acceptance letter dated 6th April, 2020.
4. It is argued that the Taxing Master wrongly held that the lease was signed by only one party despite existence of proof that it was executed by both the Landlord and the Tenant. That there was improper invocation of Section 45 of the Advocates Act in a non-contentious matter. That the Court incorrectly found that no advocate-client relationship existed despite it arising by implication from the offer and acceptance. Further, the Applicant asserts that the Taxing

Master failed to apply equitable principles under **Article 10(2)(b) of the Constitution** and ignored the fact that the Respondent had paid a Kshs.100,000 deposit prior to preparation of the lease, thereby arriving at an erroneous decision.

5. In contrast, the Respondent vide its Replying Affidavit, sworn on 24th March 2025. The Respondent pointed out that in paragraphs 3 and 4, the Applicant averred that his client at all material times was **Kenya Knitting and Weaving Mills Limited**, which expressly instructed him to prepare the lease agreement between that client and the Respondent. Therefore, all instructions and professional dealings relating to the lease emanated solely from that client.
6. Further, throughout the transaction, the Applicant acted exclusively for and on behalf of **Kenya Knitting and Weaving Mills Limited** and never for the Respondent. Consequently, the Respondent denied any Advocate-client relationship with the Respondent in relation to the lease agreement.

7. The Court has taken note of the Supplementary Affidavit sworn by the Applicant and the documents attached in support of the Application.

Issues for determination

8. The Court has carefully considered the Application, response as well as the written submissions and frames the following issues for determination;

a) Whether there existed an Advocate-Client relationship between the Applicant and the Respondent.

b) Whether the Court should set aside the decision of the Taxing Master made on 15th July, 2022.

Analysis

9. It was the Applicant's contention that the taxing officer failed to consider the letter of offer and acceptance. That this letter of offer expressly provided that the tenant would pay the Advocate's fees for drawing the lease on behalf of the landlord. It is further argued that the lease agreement was duly executed by both the Landlord and the Tenant's

representative, demonstrating the Tenant's participation and acceptance of the its obligations in the transaction.

10. The Applicant therefore submitted that the Taxing Officer committed a fundamental error in finding that the lease was not signed by the Tenant and in striking out the bill on that basis. That as a result it thereby wrongly concluded that no Advocate-client relationship existed. Counsel urges this Court to correct this error by recognizing that both the lease agreement and the letter of offer were signed by the parties and to refer the matter back for taxation accordingly.

11. On the other hand, the Respondent submitted that it never employed or retained the Applicant at any time and therefore no Advocate-client relationship existed between them. It is argued that the Applicant failed to produce any written instructions, board resolutions, or correspondence from the Respondent appointing him or his firm to act in the transaction, thereby providing no documentary proof of engagement.

12. The Respondent further contended that the Applicant did not present any letters addressed to them to demonstrate such a relationship, and that the alleged part payment of Kshs. 100,000/=, on its own, does not establish that the Applicant had been formally instructed or retained as their advocate.

a) **Whether there existed an Advocate-Client relationship between the Applicant and the Respondent.**

13. **Section 2 of the Advocates Act** defines who a Client is. It provides: -

“Client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an Advocate and any person who is or may be liable to pay to an Advocate any costs.”

14. It is the Court’s understanding that the Client who gave instructions to the Advocate was the Landlord (**Kenya**

Knitting and Weaving Mills Ltd). On the other hand, the Tenant undertook to meet the costs arising out of the preparation of the lease. The exact words used in the letter of offer are as follows;

"The lease will be prepared by the landlord's advocates.

The

costs of preparing and completing the lease together with

stamp duty, registration fees and any other disbursements

shall be borne by the tenant"

15. The lease signed by the parties dated 8th July, 2020 contains a similar clause as follows;

"(cc) To pay the Lessor's costs in connection with the preparation and completion of this Lease and a counterpart thereof together with all stamp duties and other disbursements and in the event of this Lease being surrendered to pay the Lessors' costs in connection with the preparation and completion of any such Surrender."

16. The Court has taken note of the Form of acceptance dated 6th April, 2020 by which one **Sister Tecla Muhanji** on behalf of the Respondent accepted the terms of the letter of offer. The formal lease bears the signatures of **Dalton Ochieng** as Secretary and **Tecla Muhanji** as Treasurer of the Respondent. The Letter dated 4th March, 2020 by the Respondent in its own letter head shows it was ready to let the premises on certain terms and conditions. This included the condition for payments of the legal costs associated with the preparation of the lease as follows;

“15. LEASE AND LEGAL COST

The Lease will be prepared by the Landlord's Advocates. The cost of preparing and completing the Lease together with stamp duty, registration fees and any other disbursement shall be borne by the Tenant.”

17. To this Court it is in the normal course of letting and leasing business for the Landlord to load the costs of preparation of the lease upon the Tenant. Once the Tenant accepts to pay for such costs, then it cannot shy away from

such an obligation. It cannot plead that it never instructed the Advocate and for that reason it is not obligated to pay the fees. To this Court the liability to pay the legal fees creates the Advocate-Client relationship. This is in line with Section 2 of the Advocates Act “**any person who is or may be liable to pay to an Advocate any costs.**” In this Particular case the Tenant was at all times aware of this obligation and took it up in writing. The Court notes the Taxing Officer erred in finding that the Lease was not signed, whereas evidence presented herein shows it was duly executed on behalf of the Landlord and the Tenant. That alone allows this Court to interfere with the decision of the Taxing Officer. The lease had an obligation on payments of the costs of the lease as demonstrated above. Those costs include the legal costs of preparation of the lease.

18. The Court refers to the decision in **Mereka & Company Advocates v Zakhem Construction (Kenya) [2014] KEHC 1257 (KLR)**. On the issue of retainers, the Court stated as follows;

“It is trite law that a retainer need not only be in writing but can be implied from the parties conduct on this am guided by the case of OHAGA – vs- AKIBA BANK LIMITED [2008] 1 EA 300, where it was held that, “a retainer may be implied where: (i) the client acquiesces in and adopts the proceedings; or (ii) the client is estopped by his conduct from denying the right of the advocate to act or from denying the existence of the retainer; or (iii) the client has by his conduct performed part of the contract; or (iv) the client has consented to a consolidation order.”

19. The Court also follows the decision in **Sherman Nyongesa & Mutubia Advocates v Free Holiday Limited [2023] KEHC 612 (KLR)**. **Olga Sewe J.** when faced with facts not unlike the ones before this Court ruled in favour of upholding the taxation of a similar Bill of Costs as follows;

“The parties, in their wisdom and on an arm’s length basis, agreed that the costs of drawing the

Lease as well as costs for the related tasks, such as costs in connection with the completion of the Lease, together with VAT, stamp duty, registration and other disbursements would be paid by the respondent. To my mind therefore, no retainer agreement was necessary in the circumstances as a condition for the applicant to file its Bill of Costs for taxation.”

20. Having found that there was a valid retainer it would follow that in a dispute as to the quantum, the jurisdiction lay with the Taxing Officer to tax the Bill of Costs presented.

b) Whether the Court should set aside the decision of the Taxing Master made on 15th July, 2022.

21. The Court is therefore persuaded that the Reference is merited. The Taxing Officer erred fundamentally in ignoring the facts that the Tenant had undertaken to pay for the costs of preparation of the lease. It had assumed the liability to meet the Landlord’s Advocates costs for the preparation of

the lease. This agreement had not been challenged or set aside under **Section 45 of the Advocates Act**. The Tenant did not move the Court to set aside the agreement on the grounds set out in **Section 45 of the Advocates Act**. The agreement borne out in the clause in the lease therefore stands.

22. As to costs, the same lie at the discretion of this Court and ordinarily follow the event. The same are awarded to the successful Applicant.

Determination

23. The Advocate/Applicant's Reference by way of a Chamber Summons dated 27th July, 2022 is allowed in the following terms;

- a) *The Court HEREBY sets aside the decision of the Taxing Master made on 15th July, 2022.*
- b) *The Court HEREBY orders and directs that the Advocate's bill of costs dated 17th March, 2022, be referred back to the Taxing Master (other than the Taxing Master who delivered the Ruling of 15th July,*

2022) to be re-taxed on quantum on the basis that an Advocate - Client retainer existed.

c) The costs of this Application be borne by the Respondent.

24. It is so ordered

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23RD DAY OF APRIL, 2026.

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of:

Mr. Mbai for the Advocate/Applicant.

N/A for the Client/Respondent.

Mr. John Paul - Court Assistant.