



**Okumu & Siminyu P/A Odour Siminyu & Co v Kandie (Environment and Land Miscellaneous Case E002 of 2024) [2025] KEELC 5360 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5360 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E002 OF 2024**

**YM ANGIMA, J  
JULY 17, 2025**

**BETWEEN**

**MATHEW ODOUR OKUMU & PAMHIL ODOUR SIMINYU P/A ODOUR  
SIMINYU & CO ..... ADVOCATE**

**AND**

**DAVID K. KANDIE ..... RESPONDENT**

**RULING**

1. This is a reference filed by the respondent (client) under paragraph 11 of the Advocates Remuneration Order (ARO) against the applicant (Advocate). The reference is dated 19.08.2024 whereby the respondent seeks to have the taxing officer's taxation of the applicant's bill of costs dated 06.05.2021 set aside.
2. The reference is based upon the several grounds set out on the face of the chamber summons dated 19.08.2024 and the contents of the supporting affidavit sworn by the respondent on even date. The gist of the reference was that there was no advocate-client relationship between the parties to warrant the filing or taxation of a bill of costs. The respondent contended that he had never given any instructions to the respondent to represent him in Mombasa ELC. No. 134 of 2012 (Primary suit).
3. The applicant filed a replying affidavit sworn on 13.9.2024 in opposition to the reference. He deposed that he received instructions from the respondent to act for him in the primary suit for 5 years hence the taxing officer was right in holding that an advocate-client relationship existed. The respondent thus supported the decision of the taxing officer to tax the bill of costs. The only document which the applicant annexed to the replying affidavit to demonstrate the existence of instructions was a notice of change of advocates which he filed in the primary suit.
4. Although the applicant supported the decision of the taxing officer, he disputed that the officer had any jurisdiction under Order 49 of the Civil Procedure Rules to determine the existence of the advocate-



client relationship. The court is, however, of the opinion that the jurisdiction of the taxing officer is derived from the ADO and not Order 49 of the Civil Procedure Rules. Order 49 deals only with the special powers of the deputy registrars under the Civil Procedure Rules.

5. It has been held that the existence of an advocate-client relationship is key to the taxation of an advocate-client bill of costs. In the case of *Wilfred Kovosi vs Flamco Limited* [2017] eKLR it was held inter alia;

“The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn vs Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered.

The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.”

6. The court is thus of the view that a taxing officer entertaining a bill of costs filed pursuant to ADO is obligated to ascertain the existence of an advocate-client relationship before proceeding to tax an advocate-client bill of costs. It is not enough that a notice of change of advocates was filed by the advocate. The filing of such notice ought to be preceded by instructions from the client.
7. The mere fact that an advocate actually attended court to represent a party is not necessarily evidence that such party instructed the advocate. Although it is not always necessary that instructions be in writing, at least there should be some form of evidence of the existence of an advocate-client relationship such as messages, letters, emails or other forms of communication between the advocate and the client during the period of such representation. There may be other means of demonstrating the existence of such relationship but a notice of change of advocates alone is hardly sufficient to prove the existence of the relationship. The court is thus far from satisfied that there was sufficient credible evidence before the taxing officer to demonstrate that the respondent has instructed the applicant to represent him in the primary suit.
8. The upshot of the foregoing is that the court finds merit in the respondent’s reference. The applicant bore the evidential burden proof to demonstrate that he was instructed by the respondent since the latter had denied giving such instructions. As a consequence, the decision of the taxing officer dated 30.07.2024 is hereby set aside. The applicant’s bill of costs dated 06.05.2024 is also struck out with no order as to costs.

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 17<sup>TH</sup> DAY OF JULY, 2025.**

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**Y. M. ANGIMA**  
**JUDGE**



In the presence

Gillian – Court Assistant

Mr. Siminyu for the applicant (advocate)

No appearance for the respondent (client)

