



Kabiru & Company Advocates v Mutia (Miscellaneous Application E099 of 2023) [2025] KEELRC 402 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 402 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E099 OF 2023
SC RUTTO, J
FEBRUARY 14, 2025**

BETWEEN

KABIRU & COMPANY ADVOCATES ADVOCATE

AND

JIMMY MWANZIA MUTIA CLIENT

RULING

1. Through a Notice of Motion Application dated 31st July 2024, the Advocate/Applicant seeks the following order:
 - a. That judgment be entered for the Applicant against the Respondent in the sum of Kshs 853,570.71 being the sum of money taxed and certified by the Deputy Registrar of this Court and payable to the Applicant together with interest at court rates from 9th May 2024 until payment in full.
 - b. The costs of this Application be provided for.
2. The Application is supported by the grounds therein and the depositions contained in the Supporting Affidavit sworn on 31st July 2024, by Henry Kabiru, Advocate.
3. Grounds in support of the Application are that the Applicant filed an Advocate-Client Bill of Costs dated 29th March 2023 after the Respondent failed to settle the fees owing. That on 9th May 2024, the Deputy Registrar of this Honorable Court determined that the costs payable to the Applicant amount to Kshs. 853,570.71 and a Certificate of Taxation was issued on 21st June 2024.
4. That the Certificate of Taxation has not been appealed against and/or set aside and the Respondent has not paid the taxed amount of Kshs. 853,570.71.



5. The Client/Respondent, Jimmy Mwanzia Mutia, responded to the Application through his Replying Affidavit sworn on 15th August 2024 in which he admits that on 9th May 2024, the Bill of Costs was taxed at Kshs 853,570.71.
6. He further admits that he had approached the Applicant to represent him in a matter where he was claiming damages for unfair dismissal against Cadbury Kenya Limited. That after the suit was instituted in 2018, it has never proceeded to hearing thus is pending in court.
7. The Respondent further avers that as he was waiting for the matter to proceed, the Applicant filed an application to cease acting and a Bill of Costs.
8. That after the Taxation Ruling was delivered, through his Advocates on record, he requested the Applicant to allow him to settle the taxed amount in monthly installments which request was not acted upon.
9. According to the Respondent, he had paid the Applicant a total of Kshs 95,000.00 via cash, M-pesa and bank cheque.
10. The Respondent further deposes that he can only afford to pay Kshs. 20,000.00 per month as he does not have permanent employment and in the event he gets a lump sum, he will pay the same.
11. In response to the Respondent's Replying Affidavit, the Applicant filed a Supplementary Affidavit, sworn on 15th November 2024 by Henry Kabiru.
12. Mr. Kabiru avers that when the Advocate-Client Bill of Costs was filed, the Respondent never raised the issue of any monies being paid prior and in delivering its ruling on taxation, the court aligned itself with the Respondent's submissions.
13. He further deposes that the alleged paid amounts of Kshs. 95,000/= were never paid to the Applicant with respect to the proceedings in ELRC Cause no. 479 of 2018.
14. According to Mr. Kabiru, the said monies were made towards a conveyancing matter for the transfer of property being Land Title No. NAIROBI BLOCK 102/342, the Respondent and his spouse having retained the Applicant to offer legal services.
15. Mr. Kabiru further contends that in the event the Respondent was not satisfied with the ruling of the Bill of Costs, he ought to have lodged a reference within the prescribed period which he failed to do, and as such, the ruling of 9th May 2024 is not challenged.
16. He further states that the proposed sums of Kshs. 20,000/= to be paid in monthly installments by the Respondent is not reasonable as the said monies will be paid for a period of more than three and half years which is a long time. In Mr. Kabiru's view, the Respondent's proposal is a ploy as he is a man of means and has not proved the contrary.

Submissions

17. The Application was canvassed by way of written submissions. The court has considered the submissions of both parties.

Analysis and Determination

18. Evidently, the singular issue for determination is whether the Court should enter judgment against the Respondent in terms of the Certificate of Taxation dated 21st June 2024.



19. From the record, the Advocate-Client Bill of Costs was filed on 5th May 2023 and the same was taxed at Kshs 853,570.71 in favour of the Applicant and a Certificate of Taxation issued on 21st June 2024.
20. It is notable that the Respondent has not moved to have the Certificate of Taxation set aside or varied.
21. As can be discerned from the Respondent's Replying Affidavit, he does not object to the Taxation Ruling save that he pleads to be allowed to settle the taxed sum in monthly installments of Kshs 20,000/= on the basis that he is not in permanent employment and the matter is yet to be determined.
22. Section 51(2) of the Advocates Act pursuant to which the instant Application has been brought, provides as follows:
(51)
 - (2) 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.
23. It is evident from the aforestated provision that the Certificate of Taxation once issued by the Taxing Master, is final unless set aside or altered by the court. The court may also make an order that judgment be entered in terms of the amount in the certificate of costs.
24. As stated herein, the Respondent has not objected to the Taxation Ruling and his only issue is that he is not in a position to settle the taxed sum in a single installment. This being the case, the amount entered by the Taxing Master is due to the Applicant.
25. In the circumstances, the Application dated 31st July 2024 is hereby allowed as follows;
 - a. Judgment is hereby entered against the Respondent in favour of the Applicant for the sum of Kshs. 853,570.71 as per the Certificate of Taxation issued on 21st June 2024.
 - b. Interest at court rates from 31st July 2024, which is the date the Application was filed, until payment in full.
26. The Court has also given due consideration to the assertions by the Respondent that he be allowed to settle the taxed amount in monthly installments on the basis that the matter is still pending and he is not in permanent employment. Be that as it may, it is notable that the Respondent has not moved the Court as appropriate hence no orders can issue in that regard. Nevertheless, the parties are at liberty to reach a settlement and agree on a reasonable payment plan.
27. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

No appearance for the Advocate/Applicant

No appearance for the Client/Respondent



Kemboi Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

