



Kogai & Company Advocates v Aura (Miscellaneous Civil Application E126 of 2024) [2025] KEELRC 1261 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1261 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION E126 OF 2024**

BOM MANANI, J

APRIL 30, 2025

BETWEEN

KOGAI & COMPANY ADVOCATES ADVOCATE

AND

JOSEPH AURA CLIENT

RULING

Background

1. On 10th September 2024, this court's Taxing Master assessed the Advocate-Client Bill of Costs dated 19th April 2024 at Ksh. 770,334.00. According to the taxation ruling, the Bill of Costs was assessed by increasing the amount of Ksh. 442,721.00 assessed as Party and Party costs in the parent file by one half, that is to say, Ksh. 221,360.00. The Taxing Master then loaded Ksh. 106,253.00 on the aforesaid amount to represent 16% Value Added Tax.
2. Upon delivery of the aforesaid ruling, the Client/Applicant (hereafter referred to as Client) filed the instant reference praying, inter alia, for the following orders:-
 - a. That the court allows the reference against the aforesaid taxation order to reduce the taxed amount by Ksh. 442,100.00 allegedly paid to the Advocate.
 - b. That the court re-taxes the Bill of Costs in question or remits it to another Taxing Master of the court for re-taxation.
 - c. That the court gives directions on costs of the reference.
3. The Client contends that he opposed the Bill of Costs before the Taxing Master on the grounds that he (the Client) had already paid the Advocate Ksh. 442,100.00 in reduction of her fees. He contends that this amount comprises Ksh. 242,100.00 which he allegedly remitted directly to the Advocate and Ksh. 200,000.00 which the Advocate received from his (the Client's) erstwhile employer.



4. The Client avers that the Taxing Master did not factor this sum in her ruling of 10th September 2024. As such, she committed an error of principle.
5. The reference is opposed by the Advocate. She has sworn affidavits in response dated 25th October 2024 and 19th November 2024.
6. The Advocate concedes that she is holding Ksh. 200,000.00 paid to her by the Client's former employer as lien for her fees. She avers that she is ready to give the Client credit for this amount in reduction of her fees.
7. The Advocate further confirms that she received Ksh. 180,000.00 from the Client towards fee deposit and disbursements. She says that this amount was paid to her in three batches: Ksh. 70,000.00; Ksh. 60,000.00; and Ksh. 50,000.00. Apart from this amount, the Advocate denies receiving any other money as fees for the suit that gave rise to the taxation.
8. The Advocate contends that besides ELRC Cause No. 280 of 2019 which she instituted on behalf of the Client, she undertook other work for the Client for which she billed him separately. She sets out the other work as follows:-
 - a. Consultation meetings held on 26th April 2019 – Ksh. 10,000.00.
 - b. Issuing a letter before action on 14th March 2019 – Ksh. 30,000.00.
 - c. Conducting a company search Ksh. 3,200.00.
 - d. Consultation meeting on 24th April 2029 Ksh. 5,000.00.
 - e. Processing of tax returns with KRA Ksh. 10,000.00.
 - f. Cost of following up Summons Ksh. 2,000.00.
 - g. Other miscellaneous disbursements Ksh. 1,900.00.

Analysis

9. The law is that a Judge should not interfere with a taxation order of a Taxing Master unless it is demonstrated that the Taxing Master committed an error of principle in arriving at the order. An error of principle could be inferred where the amount awarded in the taxation is manifestly excessive (*Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board Civil Appeal No. 220 of 2004; (2005) eKLR*).
10. Schedule VI of the Advocates (Remuneration) (Amendment) Order, 2014 under which the impugned Bill of Costs was presented is split into two parts which contemplate two types of Bills of Costs. Part A provides for the Party and Party Bill of Costs. Part B provides for the Advocate-Client Bill of Costs.
11. The Schedule provides the mechanism for ascertaining the quantum of Advocate-Client costs. This is by increasing the amount ascertained as Party and Party costs (by agreement or through a court order) by 50 per centum.
12. The matters which are to be ascertained under Part A of the Schedule include instructions fees, getting up fees, fees for court attendances, fees on correspondence, service fees and disbursements. As such, all items pertaining to the foregoing should be the subject of the Party and Party Bill of Costs and not the Advocate-Client Bill of Costs. At the time the Advocate-Client Bill of Costs is assessed, all of the foregoing items are presumed to have been taken into account through the Party and Party Bill of Costs.



13. Whilst assessing the amount of instructions fees under the Party and Party Bill of Costs, the Taxing Master is required to take into account any money that may have been paid to the Advocate in respect of the work done. This edict is to be found in the proviso to clause 1 of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014 which states as follows:-

“the taxing officer may take into consideration other fees and allowances due to the advocate (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the trial judge, and all other relevant circumstances.”
14. In the instant proceedings, the Client’s complaint is that he paid Ksh. 242,000.00 to the Advocate in reduction of her fees. In addition, he contends that the Advocate is holding Ksh. 200,000.00 which was deposited with her towards the decretal sum. As such, he contends that the Advocate is holding a total of Ksh. 442,000.00 which should have been factored into the taxation order.
15. The Advocate concedes that the Client paid her Ksh. 180,000.00 in fee deposit. She also concedes that she is holding Ksh. 200,000.00 deposited with her on behalf of the Client as lien for her outstanding fees. Essentially therefore, the Advocate concedes that she is in possession of Ksh. 380,000.00 from and or due to the Client.
16. I have studied the taxation proceedings and it is apparent that the Taxing Master did not interrogate the Client’s assertion that the Advocate was holding Ksh. 442,000.00 for which he (the Client) demanded credit. This is despite the Client having raised the matter in his submissions dated 31st July 2024. As such, I find that there was an error of principle committed in the taxation process which affected the quantum of costs in the Advocate-Client Bill of Costs.
17. As mentioned earlier in the ruling, correspondence (including the letter before action) are included in the Party and Party Bill of costs under clause 6 of Part A of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014. Therefore, the Advocate is not expected to bill for this item under the Advocate-Client Bill of Costs.
18. As such, the attempt by the Advocate to raise a claim for Ksh. 30,000.00 through the Advocate-Client Bill of Costs is irregular. The cost for this service is deemed to have been factored in the Party and Party Bill of Costs from whose taxation, the amount due to the Advocate under the Advocate-Client Bill of Costs is to be deducted.
19. My understanding of the term “taking instructions” under the aforesaid Schedule of the Advocates Remuneration Order entails conferencing with one’s Client in order to receive a briefing on his (the Client’s) case. This necessarily entails holding meetings during which the Client gives instructions to the Advocate and the two (the Advocate and Client) review the documents proposed to institute or defend a case. In effect, an Advocate who is instructed in a matter which is to be presented to the High Court or Court of Equal Status is expected to bill for the briefings during which instructions are given to him as part of his/her “instructions fees” when raising the Party and Party Bill of Costs under Part A of Schedule 6 of the Advocates (Remuneration) (Amendment) Order, 2014.
20. In her response to the reference, the Advocate asserts that she billed the Client separately for three consultation meetings in which she took instructions on the matter that gave rise to the taxation. Having regard to what I have expressed above, the work that was performed by the Advocate during the briefings with the Client in the three meetings comprised taking of instructions which was included in the item marked as “instruction fees” in the Party and Party Bill of Costs. As such, I do not think



that the Advocate is entitled to raise a separate fee demand for the consultation meetings at the stage of ascertaining the Advocate-Client fees.

21. The net consequence is that the Client is entitled to get credit for a total of Ksh. 45,000.00 on account of the money he deposited with the Advocate and which the Advocate sought to retain as separate fee items towards issuing of a demand letter and holding of the three consultation meetings. As seen earlier, these items are covered under Party and Party costs which are used to ascertain Advocate-Client fees. As such, to seek to raise fee demands in respect of them at the Advocate-Client stage is to double bill the Client. Accordingly, the Taxing Master ought to have factored the amount into the final amount that was awarded to the Advocate.
22. The only amount which was clearly for work which was distinct from instituting suit in ELRC Cause 280 of 2019 is perhaps the sum of Ksh. 3,200.00 paid towards company search and Ksh. 10,000.00 paid towards processing and filing of tax returns. The Client cannot seek to apply this sum to fees in the aforesaid suit since it clearly was expended on unrelated matters.
23. The Advocate has claimed disbursements of Ksh. 63,000.00. However, provision for all disbursements was made in the Party and Party Bill of Costs. As such, disbursements cannot be the subject of Advocate-Client Bill of Costs as this will result in double billing the Client.
24. In the ultimate, from the sum of Ksh. 380,000.00 which the Advocate received from the Client I will only discount the sum of Ksh. 13,200.00 which went to work which was not part of the work undertaken in respect of ELRC Cause 280 of 2019. This leaves the sum of Ksh. 366,800.00 as the fees already received by the Advocate in ELRC Cause No. 280 of 2019.
25. According to the Taxation Order that was issued on 10th September 2024, the court's Taxing Master awarded the Advocate Ksh. 664,081.00 as her fees. The Taxing Master added 16% Value Added Tax on the aforesaid amount to bring it to Ksh. 770,334.00.
26. Since the Advocate had already been paid Ksh. 366,800.00 out of her total fees of Ksh. 664,081.00, the balance due to her in fees is Ksh. 297,281.00. As per the Taxation Order, this amount is meant to attract Value Added Tax of 16%, that is to say, Ksh. 47,565.00. As such, the total amount which ought to be paid to the Advocate is Ksh. 297,281.00 + Ksh. 47,565.00 = Ksh. 344,846.00.

Determination

27. The court finds that the Client is indebted to the Advocate in the sum of Ksh. 344,846.00 being the balance of legal fees and Value Added Tax.
28. As such, the Client is directed to pay the Advocate Ksh. 344,846.00 to cover the aforesaid balance of legal fees and Value Added Tax.
29. Consequently, the Taxation Order which issued on 10th September 2024 is adjusted accordingly.
30. Each party to bear own costs of the reference.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF APRIL, 2025

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant/Client

.....for the Respondent/Advocate



ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

JUDGE

