



**M/S Mwita & Company Advocates v Langat (Miscellaneous Application E004 of 2024) [2025] KEELRC 1202 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1202 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
MISCELLANEOUS APPLICATION E004 OF 2024**

**J RIKA, J**

**APRIL 30, 2025**

**BETWEEN**

**M/S MWITA & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**PROF. WILSON KIPNG'ENO LANGAT ..... RESPONDENT**

**RULING**

1. The Advocate herein, represented the Respondent in *Kericho E&LRC Petition No. E002 of 2024*.
2. Subsequently, the Advocate-Client Bill of Costs was taxed at Kshs. 2,413,520, in a ruling of the Taxing Officer, Hon. Japheth Bii, dated 6th May 2024.
3. The Respondent was dissatisfied with the ruling, and filed this reference dated 4th December 2024.
4. He submits that the assessment of costs was exaggerated. The Petition where the Advocate acted for the Respondent was not complex. It did not raise novel issues of law. It was on violation of Bill of Rights, which is well-documented in the Constitution, and does not call for extraneous research.
5. The Petition did not go on trial. It was settled out of Court, through a consent executed by the parties, dated 25th April 2024. It was settled in the sum of Kshs. 7,481,332, exactly a month, after it was filed in Court.
6. The Respondent had already paid the Advocate Kshs. 250,000 as retainer fees. There was a valid retainer agreement.
7. Relying on *Nairobi H.C. Miscellaneous Cause No. 446 of 2013*, between *Mbugua & Mbugua Advocates v Kenindia Assurance Company Limited*, the Respondent submits that where there is a valid retainer agreement, the Advocate would only be entitled to fees and disbursements that remain unpaid.
8. Noting remained unsettled, the Respondent having paid Kshs. 250,000, under the retainer.



9. Alternatively, the Respondent submits that the assessment was in any event excessive. The Advocate sought instruction fees at Kshs. 2 million. He was allowed Kshs. 1.5 million. The sum allowed was excessive. The Petition was not complex.
10. The Advocate argued that he was entitled to high instruction fees based on complexity of the subject matter. The Respondent submits that research undertaken by an Advocate, is not necessarily indicative of the complexity of the brief; it may well be indicative of the Advocate's unfamiliarity with the basic principles of the law. He relies on the case of *First American Bank v Shah & Others* [2002] E.A. 64, on this submission.
11. Paragraph 1 [b] [j] of Schedule 6 of the [Advocates Remuneration Order](#) governs assessment of instruction fees in Constitutional Petitions.
12. The Taxing Officer is granted discretion, but shall be guided by certain factors, including nature and importance of the brief; its difficulty and novelty; the value of the subject matter; and the time expended by the Advocate on the brief.
13. Where the matter is not complex or opposed, the Taxing Officer may award such sum as may be reasonable, but not less than Kshs. 45,000. Where the matter is opposed and satisfied other criteria above, the sum shall be reasonable, but not less than Kshs. 100,000.
14. The Respondent submits that the Taxing Officer did not exercise his discretion judiciously by granting instruction fees at Kshs. 1.5 million. The Petition was settled by consent, after only a month in Court.
15. Other aspects of the ruling under challenge include award of fees for getting up. The Petition was not heard. It was settled by consent.
16. The costs for drawing up the Bill of Costs under paragraph 4 [e] of the Order, is Kshs. 180. It was granted at over 7 times. Attendance fees and disbursements granted are also challenged, as having been allowed at excessive amounts.
17. The Advocate submits that the Taxing Officer did not err, to warrant setting aside of his ruling.
18. The Advocate explains that he represented the Respondent at the Petition in E&LRC Kericho. The Respondent was the Vice-Chancellor of Kenya Highlands University. He was compulsorily sent on leave by the University. He challenged that decision through the Petition. The brief was intricate and a matter of public interest.
19. The Advocate submits that the Respondent went behind his back, and negotiated settlement. The Advocate uses strong language against his former client, accusing him of being conniving, deceitful and sly. This language is inappropriate.
20. There was no retainer agreement, where the Respondent paid to the Advocate, Kshs. 250,000 as the totality of the fees. The Advocate agrees that there was a retainer between him and the Respondent, which is not the same thing as a retainer agreement. He relies on the Court of Appeal decision [Omulele & Tollo Advocates v Mount Holdings Limited](#) [2016] e-KLR, on the distinction between retainer and retainer agreement, submitting that the Respondent should not confuse the two.
21. The amount paid by the Respondent, was merely a deposit of the payable fees. There was no agreement of the full fees, which warranted taxation.
22. The Petition was defended by more than 3 firms of Advocates. The Petitioner was on the verge of losing his employment. He was an important person, and was only able to leverage with the University, upon presentation of the Petition. There were substantive applications in the Petition. There was a Response



- to the petition, and it was ripe for hearing, before the Respondent went behind the Advocate's back and settled.
23. Settlement did not take away the Respondent's remunerative obligations to the Advocate.
  24. The Advocate submits that paragraph 2 of Schedule 6A of the [Advocates Remuneration Order](#), allows an award of fees for getting up where there is a denial of liability filed. The fee is allowable where issues are joined by the pleadings. Notwithstanding that the matter did not go to full trial, a fee for getting up and preparing for trial was chargeable.
  25. The Advocate prays the Court to uphold the ruling of the Taxing Officer.
  26. Parties agreed at the last mention before the Court, on 11th March 2025, that the reference is considered and determined on the strength of their affidavits and submissions on record.

### **The Court Finds:**

27. The Petition at the E&LRC in which the Advocate represented the Respondent, was in Court for only a month.
28. It involved termination of the Respondent's contract as the Vice-Chancellor of Kenya Highlands University.
29. It was a routine dispute about termination of employment, which could have been pursued as an employment and contractual dispute.
30. The Court is not persuaded that the Petition, constituted complex, intricate, legal issues, or even that public interest was involved. There was no novelty. The Petition revolved a contract of employment between a Vice-Chancellor and a University. It would not be said that it was complex, requiring extensive research, on the ground that there were 3 law firms representing the Respondent. Complexity would have to be shown from the facts and the law applicable to the Petition, not by the number of Advocates engaged by the Parties, or even the reputation of those Advocates.
31. The Court does not have reason to agree with the Respondent's submission, that the Advocate mistook his unfamiliarity with the subject matter, for complexity. This submission was overboard. Majority of the Advocates are familiar with their briefs and their areas of practice.
32. The 2-page ruling of the Taxing Master does not state that the Petition was complex, involving public interest, or that the Petitioner was an important person on the verge of dismissal, warranting the high instructions fees awarded to the Advocate.
33. The ruling does not seem to have addressed the submission made both parties on retainer, or retainer agreement, and the amount paid by the Respondent to the Advocate, at Kshs. 250,000.
34. The Court, relying on *First American Bank of Kenya Limited v Shah & Others* [2002] E.A 64; [Republic v Minister for Agriculture ex parte Samuel Muchiri W' Njuguna](#) [2006] e-KLR; and *Joreth Limited v Kigano & Associates* [2002] 1 E.A. 92, is persuaded that the Taxing Master did not exercise his discretion judiciously and the costs awarded to the Advocate were manifestly excessive, as to occasion an injustice to the Respondent.
35. The Petition was only in Court for a month. It was settled by consent. It was not confirmed for hearing. There were no witnesses prepared for any hearing. Although there was Response filed, and issues joined by the pleadings, the Court does not think that the fee for getting up and preparing for trial was merited. Paragraph 2 of Schedule 6A provides that no fee for getting up and preparing for trial is allowable, until the case has been confirmed for hearing.



36. The Advocate did not establish that the Petition had been confirmed for hearing, at the time the consent was filed, and neither is this indicated in the ruling of the Taxing Officer.
37. The Taxing Officer refers to the consent recorded by the parties. The Respondent settled for the sum of Kshs. 7,481,332.
38. Although the Taxing Master states that he considered all the circumstances of the case, in granting the Advocate instructions fees at Kshs. 1.5 million, he appears to have disregarded Paragraph 1 [b] [j] of Schedule 6, the *Advocates Remuneration Order*. Where the Petition is not complex or opposed, the provision recommends a reasonable sum, not less than Kshs. 45,000. Where the Petition is complex and opposed, a reasonable sum, but not less than Kshs. 100,000, is recommended.

It is Ordered:

- a. The reference is allowed.
- b. The Advocate-Client Bill of Costs shall be taxed afresh before another Taxing Officer.
- c. No order on the costs.

**DATED, SIGNED AND DELIVERED AT KERICHO ELECTRONICALLY, THIS 30TH DAY OF APRIL 2025.**

**JAMES RIKA**

**JUDGE**

