



**Boniface Masinde & Company Advocates v Guaranty Trust Bank (Kenya) Limited
(Miscellaneous Application E135 of 2021) [2025] KEELRC 1447 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1447 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E135 OF 2021**

CN BAARI, J

MAY 22, 2025

BETWEEN

BONIFACE MASINDE & COMPANY ADVOCATES ADVOCATE

AND

GUARANTY TRUST BANK (KENYA) LIMITED CLIENT

RULING

1. This ruling relates to a reference brought pursuant to Rule 11 (2) of the Advocates Remuneration Order. The Client/Applicant seeks the following reliefs: -
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to set aside the Learned Taxing Officer's decision of 8th July 2024 finding that there was no agreement on remuneration and substitute this finding with a decision that there was an agreement on remuneration, thereby divesting the Taxing Officer of jurisdiction to tax the Party and Party Bill of Cost dated 29th July 2021.
 - d. This Honourable Court be pleased to strike out the Party and Party Bill of Cost dated 29th July 2021.
 - e. In the alternative to (c) and (d) above, this Honourable Court be pleased to set aside the Learned Taxing Officer's decision of 8th July 2021 taxing the bill of costs dated 29th July 2021 as drawn at Kes. 6, 563, 197.
 - f. The Honourable Court be pleased to remit the bill of costs dated 29th July 2021 for re-taxation before a different Taxing Officer other than Hon. D. Mbeja.
 - g. Costs of this reference be borne by the Advocate/Respondent.



2. The Applicant states that the Learned Taxing Officer's erred in law and fact in finding that there was no agreement on fees because none was reduced in writing despite evidence of a series of correspondence that culminated in an agreement on fees at Ksh. 500,000/= pursuant to which a part payment was made and received by the Advocate/Respondent.
3. The Applicant avers further that the Learned Taxing Officer erred in principle in making an omnibus determination that the bill was drawn to scale without interrogating the contested items in the bill.
4. That the Learned Taxing Officer erred in principle in assessing the subject to include the claim for Kes. 57,000,000/= which was speculative and beyond the scope of remedies that the court would grant under Section 49 of the Employment Act.
5. It states that the Learned Taxing Officer erred in principle in assessing all attendances on the higher scale without an order by the judge to that effect. It further avers that the Learned Taxing Officer erred in principle in failing to tax off Ksh. 2,972,505.30/= from items 1, 2 and 3 of the bill and Kes. 35,900/= on attendances, and thereafter re-compute getting up and VAT.
6. The Applicant states that the Learned Taxing Officer erred in principle in failing to find that Ksh. 350,538/= should have been credited from the sum demanded.
7. The Client/Applicant filed a further affidavit buttressing the application and further arguing that the Taxing Officer fell in error by holding that there was no agreement on fees just because the agreement was not reduced into one document.
8. The Advocate/Respondent opposed the reference by way of a Replying Affidavit sworn on 10th January, 2025. On the issue of retainer, the Advocate argues that the correspondences referred in matter do not fit in the definition of a retainer agreement in that (i) a retainer agreement must be signed by the client (ii) no signature of the client appears in any of the correspondences aforesaid (iii) a retainer agreement just like any other written contract must be free from any of the factors that vitiate a contract such as illegality, coercion, undue influence or duress.
9. The Advocate states that the purported agreement is illegal for being in conflict with Section 46(d) of the Advocates Act, and that it is vitiated further by the apparent coercion, duress and undue influence by the Applicant towards the Respondent in an attempt to force the Respondent to engage in undercutting which is prohibited under Section 36 of the Act.
10. The Advocate states that Advocates deserve to be appropriately remunerated by their clients which is what his firm is pursuing.
11. The Advocate avers further that it has been a decade since his firm was instructed to represent the Applicant, and that the firm delivered on its assignment only to be embroiled over legal fees with the Applicant.
12. It is the advocate's position that ordinarily, a retainer agreement, if any, should be entered into at the onset when there is equality of arms between a client and an Advocate. The agreement or lack of it may determine at the very beginning whether the Advocate is to be instructed or not. But where no agreement is entered into in advance or even in the course of instructions, then it is only logical and fair to the parties that recourse will have to be had to the Applicable Schedule of the Advocates Remuneration (Amendment) Order when determining the legal fees payable to the Advocate.
13. The advocate avers that there was no error of principle of the ruling since the taxing master properly taxed the bill of costs within his discretion and there is no justification in this Reference to interfere with the discretion exercised by the taxing master.



14. He states further that the Applicant will still be in a position to recoup a substantial portion of the Respondent's legal fees by proceeding with the taxation of the party and party bill of costs, and pursue recovery of the costs against their ex-employee.
15. The Advocate prays that the reference be dismissed.
16. Parties urged the reference by written submissions, which have been duly considered.

Determination

17. I have carefully considered the Client/Applicant reference, the grounds and affidavit in its support, the Client's further affidavit, the replying affidavit in opposition and the parties' submissions. The issue for my determination is whether the reference has merit.
18. The general principle in determining taxation references was spelt out by the Court of Appeal in *Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board Nairobi* [2005] eKLR, where the Court held that on a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer, unless the taxing officer, erred in principle in assessing the costs for the reason that questions solely of quantum are regarded as matters which the taxing officers are particularly fitted to deal with, and the court will interfere only in exceptional cases.
19. The issues in contention between the parties herein, are firstly, whether or not there was a retainer agreement between the parties herein, and secondly, whether the Taxing Master committed an error of principle in his now impugned ruling.
20. On the issue of retainer, the Client/Applicant's contention is that the Learned Taxing Officer's erred in law and fact in finding that there was no agreement on fees because none was reduced into writing, despite evidence of a series of correspondence that culminated in an agreement on fees at Ksh. 500,000/= pursuant to which a part payment was made and received by the Advocate/Respondent.
21. The Advocates on his part, maintains that no retainer agreement was ever entered between the firm and the Applicant, and that the correspondences referred to in the matter, do not fit in the definition of a retainer agreement for reason that a retainer agreement must be signed by the client, yet no signature of the client appears in any of the correspondences aforesaid. He contends further that a retainer agreement just like any other written contract, must be free from any of the factors that vitiate a contract such as illegality, coercion, undue influence or duress.
22. In the case of *Premchand Raichand Ltd Another -Vs- Quarry services of East Africa Ltd and Another* the Court laid principles that a Taxing Master must adhere to as follows. The principles laid out are:
 - i. The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal.
 - ii. The taxing master was expected to tax each bill on its merits
 - iii. The value of the subject matter had to be taken into account;
 - iv. The taxing master's discretion was to be exercised judicially and not whimsically or capriciously;
 - v. Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy.



- vi. No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference.
23. It is evident that there existed retainer between the parties herein, in as far as the advocate had instructions to act for the client, but nothing shows that there was a retainer agreement in respect of the fees payable pursuant to Section 45 of the *advocates Act*.
24. The correspondences between the parties do not in my view constitute a retainer agreement, and in this respect, I uphold the finding of the Taxing Master that indeed, there was no retainer agreement on remuneration entered between the parties.
25. On whether the Taxing Master committed an error of principle, the Applicant states that the Learned Taxing Officer erred in principle in assessing all attendances on the higher scale without an order by the judge to that effect. It avers that the Learned Taxing Officer erred in principle in failing to tax off Ksh. 2,972,505.30/= from items 1, 2 and 3 of the bill and Ksh. 35,900/= on attendances, and thereafter re-compute getting up and VAT.
26. The Applicant finally contends that the Learned Taxing Officer erred in principle in failing to find that Ksh. 350, 538/= should have been credited from the sum demanded.
27. The advocate/Respondent's position is that there was no error of principle of the ruling since the taxing master properly taxed the bill of costs within his discretion, and there is no justification in this Reference to interfere with the discretion exercised by the taxing master. He asserts further, that the Applicant will still be in a position to recoup a substantial portion of the Respondent's legal fees by proceeding with the taxation of the party and party bill of costs, and pursue recovery of the costs against their ex-employee.
28. In my considered view, and having perused the Taxing Master's impugned ruling, it is evident that the Taxing Officer did not consider the provisions of the relevant Advocates (Remuneration) Order nor interrogate any of the contested items in the bill. Further, and as submitted by the Applicant, the Taxing Officer did not assign reasons for allowing all of the items that had been billed, even when most were contested.
29. It is also clear that the Taxing Master erred in finding that the value of the claim could be ascertained from the pleadings, on the premise that the amount of Kshs.57,979,165 quoted by the Claimant in the claim subject of the bill herein, was only speculative, and which error resulted in a quantum of assessment that is manifestly extravagant.
30. In the end, I find the ruling by the Taxing Officer a misdirection of principle warranting interference. The reference is thus found merited and orders granted as follows: -
- a. An order be and is hereby issued setting aside the Learned Taxing Officer's decision of 8th July 2024, taxing the bill of costs dated 29th July 2021.
 - b. That the bill of costs dated 29th July 2021 be and is hereby remitted for re-taxation before a different Taxing Officer other than Hon. D. Mbeja.
 - c. I make no orders on costs.
31. Orders accordingly.



SIGNED, DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF MAY, 2025.

C .N. BAARI

JUDGE

Appearance:

Mr. Kiplagat present for the Client/Applicant

Ms. Naututu h/b for Mr. Masinde for the Advocate/Respondent

Ms. Esther S – C/A

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