



Muriithi Kiberia & Associates Advocates v Mhasibu Sacco Society Limited (Miscellaneous Case E1045 of 2023) [2025] KEHC 782 (KLR) (Civ) (31 January 2025) (Ruling)

Neutral citation: [2025] KEHC 782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CASE E1045 OF 2023

TW OUYA, J

JANUARY 31, 2025

BETWEEN

MURIITHI KIBERIA & ASSOCIATES ADVOCATES APPLICANT

AND

MHASIBU SACCO SOCIETY LIMITED RESPONDENT

RULING

1. This is a post-judgement application where the Respondent has filed a preliminary objection to the Applicant's Notice of Taxation of costs. The applicant herein moved this court by way of an advocate-client bill of costs dated 3rd March 2023 arising from CTC Case no. 779 of 2019.
2. The respondent herein entered appearance on 21st March 2024 and filed a preliminary objection of even date on the grounds that;
 - a. The advocate is precluded from commencing the current proceedings by dint of section 45(6) of the *Advocates Act* as there exists an agreement on remuneration as between the applicant and the respondent.
 - b. The court lacks jurisdiction to entertain a matter of this nature.
3. The background to this matter is that the applicant herein entered into an agreement for the provision of professional legal services with the respondent sometime in the year 2019. The agreement at clause 10(B) provides for the remuneration due to the claimant depending on the subject value of the matter and whether a suit is defended or undefended.
4. This application was canvassed by way of written submissions by counsel for both parties who have also filed and exchanged affidavit and annexures to support their case. The parties also appear before the court and made some highlights which is useful for the determination of this matter.



Respondent Submissions

The gist of the Respondent's Preliminary objection is that there exists a valid agreement between the applicant and the Respondent by which the applicant is bound and therefore estopped from taxing his bill. That by virtue of the existence of a valid agreement of costs, the court lacks jurisdiction to determine costs in matter by way of taxation. It is also his position that the Applicant's notice of taxation is time barred. The Respondent relies on Section 45(6) of the [Advocates Act](#) which provides that:

‘subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48’

5. That by virtue of the agreement entered into by both parties, the applicant is estopped from commencing taxation as section 45(6) of the act provides that where an agreement exists the costs of an advocate shall not be subject to taxation nor to section 48. The respondent contends that the applicant advocate is barred under section 45(6) of the [Advocates Act](#) from pursuing any other or further fees other than that agreed in the agreement through taxation.

6. The respondent relies on the case of Corporate Insurance Company limited V Kang'ethe and Mola Advocates (2021) Eklr it was held that:

‘...settlement of the Advocates fee note constituted an agreement on the terms proposed in the fee and based on the first principle of the law of contract, the offer by the advocates contained in fee was accepted by the applicant who paid the consideration by way of settling it. If there is any outstanding interest, the Advocate are entitled to claim it through a suit for recovery. In other words, I find that the issue of fees was duly settled when the fee note was paid as such, the deputy Registrar does not have jurisdiction to tax the bill under section 45(6) of the [Advocates Act](#) as the settlement constitutes as an agreement between the parties. The consequence of the above findings is that the applicant's application dated 14th January 2021 is allowed and the advocates' Bill of costs dated 11th November 2020 be and is hereby being struck out.’

7. He argues that the agreement between both parties having been in writing means that the same is valid and binding on both parties. To buttress this position, he relies further on the decisions in [Corporate Insurance Company Ltd V Advocates \(miscellaneous Application 033 of 2020\)](#) (2022) KEHC 545 (KLR) (7 June) (Ruling) which emphasizes the same principle.

8. He contends further that by virtue of section 45 of the [Advocates Act](#), this Honourable court is ousted of jurisdiction to hear and determine a Bill of costs and relies on the case of Sheetal Kapila V Nariman Khan Brunlehner (2021) Eklr, it was held that;

‘...on the other hand, in this instant matter, the court lacks jurisdiction to delve into assessment of quality and/or quantity of work done commensurate to legal fees because the defendant entered into a remuneration Agreement whose validity is not contested and thereby ousted the court jurisdiction vide section 45(6) [advocates act](#) from allowing taxation of bill of costs under section 48 of [Advocates Act](#).’

9. The respondent points out that the applicant has not requested this court to set aside or vary the agreement on the grounds that it is harsh and unconscionable, exorbitant or unreasonable under section 45(2) of the [Advocates Act](#) and is time barred from doing the same. He urges the court to uphold



this preliminary objection dated 21st march 2024 b allowed with costs to the respondent and to strike out the applicant's Notice of Taxation.

Applicant's Submissions

10. The Applicant does not dispute that there exists between the parties, a valid agreement for the provision of legal services, executed in 2019 which stipulated among others the agreed fees to be paid at the end of the matter. That the on 3rd March 2023, they filed an Advocates Client Bill of Costs against the Respondent Mhasibu Sacco Limited in respect of CTC CASE NO. 772 OF 2019 base on the fact that the Respondent has refused to honour payment of the fee despite being served with fee note and despite several reminder. They acknowledge that the Respondent filed a Notice of Preliminary Objection on the grounds that by dint of section 45(6) of the Advocates Act, they are estopped from taxing their bill by virtue of the existence of the said agreement and that the court equally lacks jurisdiction to entertain a matter of this nature. They submit from the onset that the Applicant's claim against the Respondent is apt.
11. The Applicant's argument is that the agreement provides for remuneration due to the Applicant on the subject value of the matter. That the respondent herein has been in breach of the Legal Services Agreement on account of failure/refusal to live up to its terms and thus necessitated the intention to bring an action for recovery of fees upon expiry of the notice as provided by Section 48 of the Advocates Act chapter 16 of the Laws of Kenya.
12. Section 48(1) of the Advocates Act provides that:

“Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the Advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the court's jurisdiction, in which event action may be commenced before expiry of the period of one month.”

13. The respondent state that upon conclusion of the matter, the Advocate/Applicant wrote to the Client/ Respondent forwarding the final Fee Note for payment as the final fees payable in the matter as per the Legal Services Agreement between the applicant and the Respondent which the Respondent/Client refused to acknowledge. He relies on the case of Corporate Insurance Company Ltd v Advocates (miscellaneous Application 033 of 2020 (2022) KEHC 545 (KLR) (7th June 2022) (Ruling) where Judge Odunga held inter alia that:-

“...In my view the final fee note becomes final once the same is adopted as correct by the client otherwise if not adopted as presented then it follows that the said fee note remains an offer and without acceptance cannot constitute a contract between the parties.”

They also rely on the authority of Corporate Insurance Company Limited v Kang'ethe and Mola Advocates (2021) eKLR it was held that:-

“.....settlement of the Advocates Fee Note constituted an agreement on terms proposed in the fee and based on the first principles of the law of contract, the offer by the advocates contained in fee was accepted by the Applicant who paid the consideration by way of settling



it. If there is any outstanding interest, the advocates are entitled to claim it through a suit for recovery.....”

14. The Respondent/Client has failed and or refused to settle their part of the bargain as per the legal services Agreement between the Applicant and the Respondent despite the Applicant sending a reminder and a notice of taxation. They reason that by virtue of the Respondent’s failure to honour the final Fee Note, despite repeated demands, constitutes a breach of the underlying agreement as per the Legal Service Agreement between the parties.
15. The Applicants posit that Section 45(6) does not preclude the them from seeking redress for breach of contract and that this application is rightly before this court for a determination on the critical matter of whether there are any costs due to the Applicant be taxed. They submit that it is trite that a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction as issue arising is whether or not the Applicant’s Costs arising from legal services offered by the Applicant ought to be a subject of taxation. This matter can only be dealt with judge.
16. The Applicants submit that this Honourable court has jurisdiction to entertain this matter and rely on the Court of Appeal holding in *Joreth Limited v Kigano & Associates* (2002) 1 EA 92 at 99 that:

“...the Taxing officer whilst taxing his bill of costs is carrying out his functions as such only and that he is an officer of the superior court appointed to tax bills of costs.”

submit that this Honourable court has jurisdiction to entertain this matter.
17. They urge the court to find that the preliminary objection raised by the Respondent lacks merit and should be dismissed with costs to the Applicant and that should court proceed to tax the Advocate-Client Bill of costs as per the provisions of the *Advocates Act* and the applicable Remuneration Order.

Determination

18. The issues raised by the parties herein are issues of law. The court will therefore focus on the legal provisions and authorities regarding the subject matter which is an existing agreement for the provision of professional legal services. The relevant proviso is premised in the *Advocates Act* at Section 45(6) which stipulates that:

“...subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation nor to section 48.”
19. The parties herein do not dispute the existence of an agreement for professional legal services neither is its validity challenged. The court will therefore treat the issue as settled.
20. The issue for determination is the implication of such an agreement in terms of enforceability. The Applicant position is that whereas there exists a valid agreement between the Advocate/ Applicant and the Client respondent, the latter’s failure to honour the terms thereof despite fee notes and reminders amounts to a breach. The Applicants argue that their case is apt before this court because it is intended for the recovery of costs due to an advocate and that this court is of competent jurisdiction to handle the issue. That the issue concerning the Applicant’s Costs arising from legal services offered by the Applicant ought to be a subject of taxation.
21. The Preliminary objection is based on the principle of exclusion and estoppel by dint of section 45(6), and lack of jurisdiction of the court. The interpretation of section 45(6) of the *Advocates Act* is laid



down in the authority of Corporate Insurance Company limited V Kang'ethe and Mola Advocates (2021) Eklr it was held that:

‘...settlement of the Advocates fee note constituted an agreement on the terms proposed in the fee and based on the first principle of the law of contract, the offer by the advocates contained in fee was accepted by the applicant who paid the consideration by way of settling it. If there is any outstanding interest, the Advocate are entitled to claim it through a suit for recovery. In other words, I find that the issue of fees was duly settled when the fee note was paid as such, the deputy Registrar does not have jurisdiction to tax the bill under section 45(6) of the *Advocates Act* as the settlement constitutes as an agreement between the parties. The consequence of the above findings is that the applicant’s application dated 14th January 2021 is allowed and the advocates’ Bill of costs dated 11th November 2020 be and is hereby being struck out.’

22. The effect of the above authority which has been referenced by both parties is that where there exists an agreement for the settlement of an advocate’s fees the same automatically falls within the premise of the law of contract.

Secondly, court does not have jurisdiction to tax the bill under section 45(6) of the *Advocates Act* as the settlement constitutes as an agreement between the parties.

23. The parties herein have also made reference to section 48 of the *Advocates Act* which provides:

“Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the Advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the court’s jurisdiction, in which event action may be commenced before expiry of the period of one month.”

24. This section has also been clearly interpreted in the authority of Sheetal Kapila V Nariman Khan Brunlehner (2021) Eklr, where it was held that;

‘...on the other hand, in this instant matter, the court lacks jurisdiction to delve into assessment of quality and/or quantity of work done commensurate to legal fees because the defendant entered into a remuneration Agreement whose validity is not contested and thereby ousted the court jurisdiction vide section 45(6) *advocates act* from allowing taxation of bill of costs under section 48 of *Advocates Act*.’

25. In my view this interpretation speaks to the circumstances of this case and the principle posited is that an agreement of this nature is ousted from the jurisdiction of court taxation of bill of costs under section 48. Be that as it may, it is apparent that the relevance of the two sections to the circumstances in this matter is the existence of a valid agreement for professional legal services under section 45(6) which is excluded from taxation of bill of costs which falls under section 48.

26. The applicant’s legal recourse for enforcement is therefore to be found within the law of contract as opposed to the *Advocates Act* vide which this application was made. This is in line with the finding in



“... Now sub-section 45(1) on which the Advocates rely as an alternative argument covers remuneration in respect to the business referred to in parts (a)(b) and (c) of the provisions. Non-contentious business is not such business. It would therefore seem to this court that agreements in respect to remuneration for non-contentious business will be valid as long as they are agreements that comply with the general law of contract governing agreements and for as long as they are not harsh, unconscionable, exorbitant, unreasonable, in breach of statute or otherwise unlawful.”

27. Based on the above, this court finds that the preliminary objection raised by the respondent in this matter has merit and is hereby upheld with costs to the Respondent. It is hereby so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31st DAY OF JANUARY 2025

R.O.A

HON. T. W. Ouya

JUDGE

For the Applicant: Ms Ireri

For Respondent: Mr. Ochieng

Court Assistant: Martin Korir

