



**Gachenge v Muthike & Makworo Advocates (Miscellaneous Civil Case E059 of 2024) [2025] KEHC 1076 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1076 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS CIVIL CASE E059 OF 2024  
EM MURIITHI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**PETER WANJOHI GACHENGE ..... CLIENT**

**AND**

**MUTHIKE & MAKWORO ADVOCATES ..... ADVOCATE**

**RULING**

1. The applicants filed Chamber Summons dated 16<sup>th</sup> July, 2024 seeking the following orders:
  1. Spent.
  2. That the Honourable Court be pleased to issue a stay of execution of the Ruling delivered on 3<sup>rd</sup> July 2024 and any consequential orders therefrom pending the hearing and determination of the application herein.
  3. That the decision of the Deputy Registrar as evidenced in the ruling delivered on 3<sup>rd</sup> July 2024 with respect to items 1 and 2 in the Bill of Costs dated 18<sup>th</sup> December, 2024 be set aside and taxed afresh by this Honourable Court.
  4. That in the alternative, the Honourable court be pleased to order that the Bill of Costs with respect to items 1 and 2 be taxed afresh by another taxing master.
  5. That the costs of this application be provided for.
2. Which application is based on the following grounds.
3. That the learned Deputy Registrar Hon. Claire Wanyama delivered a Ruling on 3<sup>rd</sup> July, 2024 with respect to the Advocates-Client Bill of Costs dated 18<sup>th</sup> December, 2023 making a final assessment of Kshs.318.440/- which was grossly excessive and not based on sound principles of taxation.



4. That the learned Deputy Registrar based the instruction fees on the subject matter whose value is not supported by any evidence. There was no value of the subject matter disclosed from the pleadings or judgment in Gichugu Succession Cause No.97 of 2017.
5. That the learned Taxing Master failed to consider relevant principles in taxation of instruction fees including complexity of the subject matter, value of the subject matter, importance to the parties and the work involved.
6. The applicant based his application on the 15 paragraphs supporting affidavit dated 16<sup>th</sup> July, 2024.
7. The applicant's case is that he had an oral agreement where he was to pay the Advocates agreed fees of Ksh.20.000; That he is illiterate and his eyesight is impaired; That the Advocates made him sign a bunch of documents whose contents were not explained by the Advocates.
8. That the Advocates filed Confirmation of Grant. However, before the confirmation hearing his sons stumbled upon the documents that he had signed one of them being an agreement dated 4<sup>th</sup> March 2022. That the aforesaid agreement is purported to have been made by him and Susan Rwamba Nyaga whom he has no knowledge of and is definitely not an advocate. He therefore do not understand why the advocates are relying on an agreement which they were not parties to.
9. That the agreement is what the Advocates relied on to file the Bill of Costs dated 18<sup>th</sup> December 2023 culminating in the impugned Ruling delivered by Hon.Claire Wanyama on 3<sup>rd</sup> July 2024; He appointed the firm of SOK LAW to represent him. That he believes that the learned taxing master was misled by the Advocates and ended up making a wrong determination as a result of reliance on the agreement.
10. The respondent filed a Relying Affidavit dated 30<sup>th</sup> September, 2024 with the averments that it is not true that there was an oral agreement that the applicant to pay the firm Kshs 20,000/= as the legal fee; That the Applicant visited their offices and was duly advised on his case and the charges which advise he very well understood. Further, the Applicant was also accompanied by his witnesses who understood the contents of the agreement that was entered between the financier, Susan Rwamba and himself to facilitate the succession proceedings.
11. That the respondent acted upon the Applicant's instructions and filed the summons general dated 5<sup>th</sup> August 2023 which were duly signed by the Applicant and the same was fixed for hearing of the application on 1<sup>st</sup> November 2023 which was well communicated to the client; That legal fees have not been paid despite drawing and filing the said summons general application and hence the Advocate-Client Bill of Costs filed in Kerugoya Misc Application E008 of 2024 which was duly served upon the Applicant but he did not file any reply to the same.
12. Further, the respondent was not party to said finance agreement and filed the Advocate- Client Bill of Costs since they had drawn and filed the summons general application in Gichugu Succession Cause Number 97 of 2017 which services were not paid.
13. The applicants and the Respondent did not file submissions.

#### **Issue**

14. Whether the taxation of the bill of costs be set aside and taxed afresh



## Analysis

15. The Taxing Master taxed the advocate- client bill of costs under schedule 10 (b) of the Advocates Remuneration Order that provides for fees in Probate and Administration Causes
16. Schedule 10 (1) (a) of the Advocates (Remuneration) Order gives a table of fees payable in such proceedings. It states “to apply for grant of probate of written will, or proof of oral will, of letter of administration with or without will annexed, the proceeding not being contested where the gross capital value of property comprised in the grant ... 5% of the value on the first KES 1,000,000.00 thereof and 1% over KES 1,000,000.00.
17. A perusal of the Advocate-Client Bill of Costs in the file showed that the value of the subject matter is indicated as Ksh.15,814,000.
18. The applicants deposed that he had an oral agreement where he was to pay the Advocates agreed fees of Ksh.20.000.
19. The respondent deposed that the Applicant visited their office accompanied by his witnesses who understood the contents of the agreement that was entered between the financier, Susan Rwamba and himself to facilitate the succession proceedings.
20. The applicant deposed that the said agreement is what the Advocates relied on to file the Bill of Costs dated 18<sup>th</sup> December 2023 culminating in the impugned Ruling delivered by Hon. Claire Wanyama on 3<sup>rd</sup> July 2024.
21. In *Mugambi & Co. Advocates v John Okalogwayo & Another* [2013] eKLR it was held: -

“The jurisdiction of a taxing officer is provided for in the Advocates (Remuneration) Order. That jurisdiction is to tax bills of costs in accordance with the applicable schedule of the remuneration order where there is no dispute as to retainer, or where costs have been duly awarded by an order of the Court.”
22. In *Republic v Kenyatta University & Another Exparte Wellington Kihato Wamburu* [2018] eKLR, the court stated that the taxing master has discretionary power to take into account the subject matter of the suit, the complexity of the matter and the amount of work invested in handling the suit (emphasis court) with a view to awarding a reasonable fee.
23. In *Keziah Gathoni Supeyo v Yano t/a Yano & Co. Advocates* [2019] eKLR Nyakundi J. observed that:

“The duty of a taxing officer is to assess the fair and reasonable remuneration under the Advocates Remuneration Order that a party or an advocate is entitled to pay to the other party who is said to have won the legal contest. On perusal of the submissions, I am concerned with an issue as to whether the taxing officer decision in exercising discretion applied the settled principles on various cases in assessing counsels’ bill of cost. It is also clear that item one on instruction fee was allowed as drawn by the respondent counsel.
24. The applicant deposes that the learned Deputy Registrar based the instruction fees on the subject matter whose value is not supported by any evidence. That the respondent acted upon the Applicant’s instructions and filed the Summons dated 5<sup>th</sup> August 2023.
25. The aforementioned Summons does not fall under item 1 of the Bill of Costs and should be taxed as the value of the subject matter.



26. The Taxing Officer correctly applied the above Advocates (Remuneration) Order 2014 provision as a starting point for the assessment of instruction fees and the said Order (2014) for the reason that the matter at hand was filed in the year 2023.
27. The applicant had reason to believe that she based her decision on the agreement that was purported to have been made by him and Susan Rwamba Nyaga. On the other hand, the alleged oral agreement on the instruction fees has not been proved by evidence. The taxing Officer was in the circumstances expected to consider the value of the subject matter so far it can be ascertained, any complexity in the matter and need for dispatch and the respective value of the case to the parties in reaching a fair taxation on the Bill of Costs.
28. However, the taxing officer's ruling indicates that the Bill of Costs was opposed and that "the instruction fee is to be determined from the value of the subject matter of Ksh.15,814,000/-". The ruling does not disclose the nature of the opposition by the Client especially whether the allegation of an agreement on costs was raised and how it was resolved, and it gave no reasons for her decision as required under the Advocates Remuneration Order. This Court is not able to find on the available material that the taxing officer applied the correct principles of taxation applicable to the Bill of Costs. In the circumstances of this defect, the Court is obliged to direct a re-taxation before a different taxing officer.

#### **Order**

29. Accordingly, for the reasons set out above, the Court finds merit in the Chamber Summons dated July 16, 2024 and the Ruling of the Deputy Registrar on the taxation of bill of cost herein is set aside and the Court directs that the taxation be carried out afresh by taxing officer differently constituted as prayed in Prayer No. 4 of the Chamber Summons.
30. Costs in the Cause.  
Order accordingly.

**DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **APPEARANCES:**

Ms. Karinga for the Applicant.

Ms. Otieno for Mrs. Makworo for Respondent.

