



Governor of Kericho County v Manyonge Wanyam & Associates LLP (Miscellaneous Application 243 of 2024) [2025] KEHC 1150 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS APPLICATION 243 OF 2024
TA ODERA, J
FEBRUARY 27, 2025
IN THE MATTER OF THE ADVOCATES ACT
AND
IN THE MATTER OF THE TAXATION OF ADVOCATE AND CLIENT**

**BETWEEN
THE GOVERNOR OF KERICHO COUNTY CLIENT
AND
MANYONGE WANYAM & ASSOCIATES LLP ADVOCATE**

RULING

Introduction

1. The Applicant/client filed this Application seeking to strike out Bill of Cost dated 16th August, 2024 filed by the Respondent/Advocate seeking a payment of Kshs 348,666,108.00 for legal fees for legal services rendered in respect to Kisii Pet No.18 of 2022(Formally Kericho Pet No. 18 of 2014); *The Governor Kericho County v Kenya Tea Development Authority (KTDA)* & 27 others.
2. The Application was based on the grounds on the face of the Application. It was equally premised on the Supporting Affidavit of Dr Wesley K. Bor the Applicant/Client's, County Secretary who averred that Kericho County/Client, the applicant herein entered into a contractual agreement with the respondent / advocate as to the fees payable for the legal services rendered in the aforementioned matter. The respondent, Respondent/advocate raised a legal fee note of Kshs.3, 556,034.50 and former Governor agreed on payment of the said fee and the same was subsequently paid on 7th December, 2015. Later on, the client was surprised to receive a final fee note dated 15th October, 2021 from the Respondent seeking payment of Kshs.3,750,000.00/=.



3. He disclosed also the Respondent/Advocate subsequently sent a deposit request note requesting for payment of Kshs. 2,500,000.00/= vide the letter dated 28th April, 2022.
4. He narrated that on 11th October, 2022 the Respondent/ Advocate filed a bill of cost dated 16th August,2022 seeking for Kshs. 348,667,108.00/= for legal services rendered in the matter. At that the time of filing the bill of costs, the matter was pending judgement. Accordingly, the Applicant/Client filed an application seeking for stay of taxation of the bill of costs pending the delivery of the Judgment. The Notice of Motion application was placed before the Deputy Registrar Hon. Dorcas Mac'Andere on 6th March 2023 who upon hearing both parties, ordered that the bill of costs be stayed till after delivery of the judgement.
5. He disclosed that on 3rd October, 2023 the judgement in the matter was delivered and upon delivery of the judgement the County Attorney approved the Respondent/Advocate's final note dated 15th October, 2021 recommending full payment of Kshs.3,750,000/=; that Subsequently, the County Secretary marked the final note and referred it to finance department for review and further action; that the client was in the process of paying the Respondent's /Advocate's final fee note.
6. He decried that Respondent/Advocate did not notify the Applicant/Client of his intention to opt out of the retainer agreement and therefore the bill of cost dated 16th August, 2022 filed is in total breach of Section 45(6) of the *Advocates Act* that bars an Advocate from filing a bill of cost where there is an agreement for fees.
7. He contended that since there was an agreement on legal fees between the Respondent/Advocate and the Applicant/Client, the Respondent/Advocate is estopped in law and equity from turning around to file a bill of costs. He also contended that since there was an agreement between the Applicant and the Respondent, the Deputy Registrar has no jurisdiction to tax the bill of costs dated 16th August, 2022 under Section 45(6) of the *Advocates Act*. He termed the Bill of costs dated 16th August, 2022 is frivolous, vexatious and an abuse of the court process and ought to be struck out.
8. In response the Respondent/Advocate filed reply affidavit sworn by, Peter Manyonge Wanyama the Managing Partner of Manyonge Wanyama & associates LLP, the advocate.
9. He averred deposed that on 4th December, 2024 he received instructions to in relation to Kisii Petition 8 of 2022 - (formerly Kericho Constitutional Petition No.18 of 2014) *The Governor Of Kericho County Versus Kenya Tea Development Authority & 53 Interested Parties*. He underscored that as per the said letter, the fees advocates by the client was to be determined as per the *advocates Remuneration order*.
10. He stated that it is not true that that there is a legal fees/retainer agreement with the advocate in relation to the matter as alleged by the client. He contended that the County Government of Kericho is a constitutional body whose contractual decisions should be reduced in written contracts and thus in the absence of the same, the Court cannot imply a contract or speculate on its terms.
11. He disclosed that he has held several meetings with the client to discuss payment of legal fees in several matters handled for the Client including the matter. He specifically stated that on 27th April 2022 he held a meeting at Sagret Hotel in Nairobi with the client's representatives to discuss payment of outstanding fees in the matter. On the said date he informed the client that the earlier Final fee note of 15th October 2021 was recalled because it was erroneous since the matter had not yet been concluded. He stated that the parties agreed that the Respondent/Advocate would raise a deposit request note of Kshs. 2.5 million to cover part of the legal costs and disbursements in the case pending its finalization. The deposit request notes of 2.5 million was raised on 28th April 2022.



12. He was disturbed that client chose to annex the deposit request fee on 28 April 2022 to his supporting affidavit herein but ignored the forwarding letter with the intention of deceiving the court. He was equally disturbed by the clients claim that the fee noted dated 15th October 2021 is evidence of a legal fees' agreement and it processed the fees of Kshs.3, 750,000 as payment on 24th October 2023 in respect of a final fee note that was raised on 25th October 2021, two years earlier.
13. He contended that the client has never paid the said Kshs.3, 750,000 as alleged and that if the same was paid, the same should be used to defray the legal costs that will be taxed. He disposed that the markings on payment are being used as a basis to stall the taxation of the fees. He reiterated that the fee note of 15th October 2021 was re-called after a meeting of the parties on 27th April 2022 because it was issued prematurely.
14. It was his deposition that the petition was heard on 20th and 21st July 2022 by a 3-judge bench and upon conclusion of the same, the advocate raised a final fee note to the client for payment but the client failed to make the payment
15. . He averred further that after the 9th August 2022 General elections, a new Governor was elected. He decried that he has tried to engage officials in the new regime but they have completely frustrated him and thus was left with no option other but to tax the legal costs.
16. He narrated that the bill of costs was filed on 11th October 2022. The client resisted attempts to be served with the bill and the taxation notice and was scheduled taxation on 15th November 2022. The client filed the application dated 27.2 23 in this file seeking to stay the taxation because the judgment had not been delivered. The advocate consented to the application and the taxation was stayed pending the delivery of the judgment which was done on 3rd October 2023. After delivery of the judgment, the Deputy Registrar was informed and proceeded to schedule the matter for taxation on 22nd January 2024. On 27th November 2023 when the taxation notice date of 22nd January 2024 was issued by the Deputy Registrar and the client was directed to file a replying affidavit and submissions to the bill of costs which was done on 21st December 2023. He thus decried that in the instant application, the client appears to be walking away from the consent that the matter be taxed. He decried that the application is meant to frustrate the advocate and stall the taxation on the baseless claim that there is an advocate/client retainer agreement and that the client is in the process of paying Kshs.3,750,000 to settle the fees.
17. He contended that the purpose of taxation of advocate/client bills of costs is to determine the actual fees due to the advocate whenever there is no legal fees agreement and thereafter, the advocate and client can settle the accounts. He contended that the Deputy Registrar is obligated to tax the bill by applying many factors such as the complexity of the matter, the input of the advocate etc and the Deputy Registrar does not usually accept the bills as drawn. It was his contention that the fact that there is no retainer agreement or legal fees agreement between the parties in the matter and hence taxation should proceed.
18. During the Interpartes hearing of the Application the court directed the same be disposed of by way of written submissions.

Determination

20. I have considered the Application, the reply thereto and the written submissions of the parties. The sole issue for determination is whether there exists a legal fees agreement that ousts the Jurisdiction of the Deputy Registrar from proceeding with the taxation of the Advocate/Client Bill of cost date 16th August, 2022.



21. The Applicant/Client's objection on taxation of the Advocates/Clients bill of costs is that there exists a fee /retainer agreement which ousts the jurisdiction of the Deputy Registrar from taxing the Respondent's advocate/client Bill of Costs dated 16th August, 2022. The provisions of section 45(6) of the *Advocates Act* in this regard provide that the fee of an advocate shall not be subjected to taxation, where an agreement has been made by the advocate and client fixing the advocate's remuneration.
22. The Advocate/Applicant on their part, argue that there was no agreement for fee between them and the Clients/Respondents and therefore, the matter did not fall under section 45 of the Act. It was their case that there being no agreement for fee the taxing officer ought not to down her tools.
23. Section 45 provides as follows:

- “ 1. Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—
 - a. before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;
 - b. before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate's instruction fee in respect thereof or his fees for appearing in Court or both;
 - c. before, after or in the course of any proceedings in a Criminal Court or a Court Martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof; and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.”

24. In the case of *Kakuta Maimai Hamisi, Peris Pesi Tobiko v Independent Election and Boundaries Commission and Returning officer Kajiado East Constituency* [2017] eKLR, the Court stated:

“ [30] To constitute a valid and binding agreement for the purpose of section 45 of the *Advocates Act*, it expressly provides that the same must be in writing and signed by the client or his agent duly authorized in that behalf. In this case, both the two letters are not signed by the client. Whereas an agreement may be formed by a series of correspondences, the client not exhibited any document by which he signalled his acceptance of the proposed fees by the advocate. In my view, for a document to be said to constitute a valid and binding agreement for purposes of section 45 of the *Advocates Act*, the same must not only be unequivocal that it signifies what the precise final amount is but must be signed by the person to be charged who in this case is the client. This was the position adopted by Tanui J, in *Raini K Somaia v Cannon Assurance (K) Ltd* Kisumu HCMA No 289 of 2003”



25. Equally in the case *Nzaku & Nzaku Advocates v Tabitha Waitibera Mararo as Trustee of Tracy Naserian Kaaka (minor) & others* [2020] eKLR: the court observed as observed as follows
- “An agreement for fees contemplated under section 45, is a contract whose terms and conditions must be clear and unambiguous. There must be consensus or meeting of the mind between the parties and it must also be entered into freely without undue influence or promise.”
26. The Applicant/client has however urged me to imply that there was a fee agreement from the conduct of the Parties. At Paragraphs 13 and 14 of the supporting Affidavit, the Applicant/claims they received a final fee note of Kshs. 3,750,000 from Respondent/Advocate vide a letter dated 15th October, 2021. The Applicant/Client goes on to claim that after the delivery of the Judgement the said fee note was forwarded to its finance department with remarks by the county attorney with remarks to the effect “recommending for payment”. The Applicant thus contends that said fee note was clear evidence to prove that there existed a fee agreement between the parties out of which fee note was raised.
27. However, the Respondent/Advocate rebutted this claim. He averred that the said fee note was recalled vide a letter dated 28th April, 2022 for reasons that it was issued prematurely. The decision to recall was made during meeting held between Respondent/Advocate, the former governor and the then County Executive Committee member for Finance on 27th April, 2022 at Sagret Hotel in Nairobi. These averments were not in any way rebutted by the Applicant/client. Therefore, the fee note issued on 15th October, 2021 having been recalled for being erroneous after an agreement by the parties that a final fee note could not issue before the conclusion of the hearing, the same cannot relied upon to imply that there existed a fee agreement/retainer between the parties in respect to the matter in question.
28. After the conclusion of the hearing of the matter, the Respondent/Advocate did forward the final fee note of Kshs. 55,000,000 vide a letter dated 22nd July, 2022 as was agreed in the meeting of 27th April, 2022. From record before me it’s outright that the letter dated 22nd July, 2022 was never responded to by the Applicant/Client either agreeing to settle the said fee not or denying to settle the same. There being no such correspondence, it is difficult to hold that there was a fee agreement was ever entered into by the conduct of both parties.
29. The Applicant/Defendant has also presented as evidence a letter Addressed to the firm of Brian Otieno and Company Advocates, the firm of advocates acting on their behalf on this matter. The said letter enclosed evidence of payment statement of total Kshs. 3,556,034.50 which had already been paid to the Respondent/Advocate. The learned counsel for the Applicant while making reference to said letter submitted that the fact that fee indicated in the statement payment enclosed therein had already been paid was evidence enough that there existed a written fee agreement upon which the payment was based as required under section 45(1)(c). However, the said letter does not also explain whether the Sum of money disbursed was the entire legal fees due to the advocate as agreed by the parties, whether there was any fee yet to be settled and how much it was.
30. Curiously the Applicant/client has not supplied or made reference to this court any correspondence they ever sent to the Advocate client in response to any of the fee notes they allege should be relied upon by this court to imply that a retainer/fee agreement between. It has not been established that there was in indeed a meeting of minds in so far as the entire legal fee for the matter is concerned without any letter from the client to the Advocate regarding the fee required. The Applicant/Client has on one hand claimed that they were surprised to receive a fee note of Kshs. 3,750,000(see paragraph 6 of the supporting affidavit) after payment of Kshs 3,556,034.50 7th December 2015 as fees in the matter by the former governor (see paragraph 5 of the supporting affidavit). On the other hand, they claim be



preparing to pay the very fee note they received by surprise (see paragraph, 13 to 15 of the supporting affidavit). How would one claim that he received a fee note by surprise and then claim be preparing to pay it? Definitely the two averments of the client display paint a picture of a party who does not know how much the agreed legal fees was, how much had already been had been paid or even how much is yet to be paid. I have perused the record and the application and the reply and the submissions placed before Court and I find that there is no written fee agreement signed by the parties herein was exhibited by the Applicant/client to support their argument that they entered into an agreement for fee with the Respondent/Advocate.

31. The Applicant/client has no option but to yield that it has no records from the former regime as to show that there existed any written fee agreement between the parties in the matter setting out the entire fee payable, the modalities of payment and the timelines of making payments and allow the taxing master to proceed with taxation bill of cost dated 16h August, 2024. As correctly submitted by the Respondent/Advocate, the client should be rest assured that in case there was any fees advanced to the advocate during the conduct of the matter, the same shall deducted from the taxed costs.
32. The parties in the Letter of instruction dated 4.12.24 agreed to be bound by the [Advocates Remuneration order](#) determination of the fee payable. This leaves no room for argument. This court has no jurisdiction to re-write an agreement between the parties. The Applicant should take comfort that the Deputy Registrar shall apply the Advocates remuneration order in determining the correct fee payable as it was agreed by the parties.
33. In the end, based on the above analysis I do not find merit in the Applicant's application and thus the same is dismissed with costs.
34. It is so ordered.

T.A ODERA

JUDGE

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Court Assistant - Oigo

