



REPUBLIC OF KENYA



Joe N Mwanthi & Co Advocates v Javisapa Enterprises Limited & another (Miscellaneous Cause 198 of 2018) [2025] KEHC 1364 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE 198 OF 2018
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

JOE N MWANTHI & CO ADVOCATES ADVOCATE

AND

JAVISAPA ENTERPRISES LIMITED 1ST CLIENT

NALO CONSTRUCTION CO LTD 2ND CLIENT

RULING

1. On 26th March 2019, Hon. C. Wanyama Deputy Registrar, delivered a taxation ruling by which she dismissed the advocate/client bill of costs filed by the applicant.
2. In reaction to the determination by the Deputy Registrar, the applicant filed a reference by way of chamber summons dated 24th March 2021 seeking the following orders:
 - i. That the entire ruling of the taxing master, Honourable C. Wanyama (Deputy Registrar) dated, signed and delivered on 26.3.2019 be set aside
 - ii. That the Advocate/Applicant's Bill of Costs dated 23rd April 2018 be placed before another taxing master of competent jurisdiction for taxation.
 - iii. That costs of this application be provided for.
3. The application is supported by the grounds on its face and the supporting affidavit sworn on 24th March 2021 by Joseph Nzyoki Mwanthi.
4. The Respondent opposed the application and filed a Replying Affidavit sworn on 3rd May 2021 by Jacqueline Wambui Njeru.



5. The application was canvassed through written submissions.
6. I have carefully considered the Application together with the supporting affidavit, the replying affidavit and the written submissions made by the learned counsel.
7. According to the *Black's Law dictionary, 9th Edition*; Halsbury's Laws of England, 5th Edition, 2009 vol 66;
A retainer is defined as:
 1. A client's authorization for a lawyer to act in a case.
 2. A fee that a client pays to a lawyer simply to be available when the client needs legal help during a specified period or on a specified matter.
 3. A lump sum fee paid by the client to engage a lawyer at the outset of a matter- also termed engagement fee.
 4. An advance payment of fees for work that the lawyer will perform in the future- also termed retaining fee.
8. At page 13 para 763, in Halsbury's Laws of England (supra) the concept is also defined thus:

“The act of authorizing or employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client. Thus, the giving of a retainer is equivalent to the making of a contract for the solicitor's employment...”
9. From the above definition, it follows that a 'retainer' covers a broad spectrum. It encompasses the instructions given to an advocate as well as the fees payable thereunder.
10. On the other hand, the term 'retainer agreement' is anchored in the *Advocates Act* and in particular Section 45 thereof. It provides inter alia:

45. Agreements with respect to remuneration

“(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) ...

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.”
11. An agreement entered into pursuant to the above section is what can be termed as a 'retainer agreement.' As the section indicates, under such agreement, the parties 'fix' or put a cap on the advocate's instruction fee, meaning that both parties are beholden to the amount so fixed.



12. In *Kakuta Maimai Hamise v Peris Pesi Tobiko, IEBC & Returning Officer Kajiado East Constituency* [2017] eKLR, it was held that:

“The issue of validity of agreements between advocates and clients with respect to remuneration was dealt with by Ochieng, J. in *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Limited (2)* [2006] 1 EA 5 in which the learned Judge held that a reading of section 45(1) of the *Advocates Act* reveals that the agreements in respect of remuneration would be valid and binding on the parties thereto provided that the agreements were in writing and signed by the client or his agent duly authorized in that behalf.”

13. It also follows that for the retainer agreement to be valid and binding, the same must have been put in writing and signed by the client and or his agent.
14. It is common ground that the parties herein had a valid retainer agreement. I have keenly perused the retainer agreement produced by the applicant herein, the terms of that agreement are very clear and the same bears the stamp of the applicant.
15. In the presence of a valid retainer agreement capping the legal fees payable, there can be no taxation of an advocate/client bill against the respondents/clients.
16. I have also read the taxing officer’s decision and reasons for it. In my view, the taxing officer considered the material placed before her. On this, the taxing officer was right.
17. It is, therefore, my finding that there was a retainer agreement between the Applicant and the Respondents. I find no merit in the application dated 24th March 2021 and the same is dismissed with no orders as to costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mwanthi for Advocate/Applicant

N/A for 1st Client/Respondent

Court Assistant: Carlos

