



Mwangi Keng'ara & Co. Advocates v Interways Works Limited (Miscellaneous Application E297 of 2021) [2025] KEHC 1023 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1023 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E297 OF 2021**

PM MULWA, J

FEBRUARY 27, 2025

BETWEEN

MWANGI KENG'ARA & CO. ADVOCATES ADVOCATE

AND

INTERWAYS WORKS LIMITED CLIENT

RULING

1. This Ruling determines two applications. The first application is a Notice of Motion dated 6th July 2022 (orally amended to read 2023) by the Advocate seeking entry of judgment in her favour for Kshs. 2,095,435/- in terms of the certificate of costs dated 28th June 2023. It is opposed by the Client through a grounds of opposition dated 14th February 2024.
2. The second application is a Notice of Motion by the Client dated 28th August 2023 seeking setting aside of the taxation ruling dated 19th June 2023 which assessed the Advocate's fees at Kshs. 2,095,435/-. The application is supported by the affidavit sworn by Joel Kibe on 28th August 2023. It is opposed by the Advocate through a replying affidavit sworn by Advocate Mercy Mwangi on 3rd October 2023.
3. I have considered the applications, responses and the written submissions dated 20th February 2024 and 27th February 2024 by the Client and the Advocate respectively.
4. There are three issues for determination. The first two preliminary issues are whether the reference is time-barred and grounded on an invalid notice of objection.
5. On these issues the Advocate submitted that the reference should have been filed within 14 days of the issuance of the taxation ruling. The Advocate also contested the competence of the notice of objection due to non-payment of the requisite court filing fees. She pointed out that the notice of objection was filed as a general document in the High Court Commercial, which is zero-rated while the Judiciary



e-filing portal prescribes a court filing fee of Kshs. 100/- for objections to taxation. She faulted the Client for not filing any evidence to the contrary. Therefore, she submitted that without payment of the requisite court filing fees, the notice of objection remains unfiled to date and is improperly before the Court.

6. Rule 11 of the Advocates Remuneration Order, 2009, provides that:



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| <p>“11.</p> | <p>Objection to decision on taxation and appeal to Court of Appeal</p> <table border="1"> <tr> <td data-bbox="858 309 1123 757">(1)</td> <td data-bbox="1123 309 1402 757">Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.</td> </tr> <tr> <td data-bbox="858 757 1123 1480">(2)</td> <td data-bbox="1123 757 1402 1480">The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.</td> </tr> <tr> <td data-bbox="858 1480 1123 1998">(3)</td> <td data-bbox="1123 1480 1402 1998">Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.</td> </tr> </table> | (1) | Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. | (2) | The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection. | (3) | Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal. |
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| | <p>(4)</p> <p>The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”</p> |
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7. In interpreting the above provision, the Court has held that where the taxation ruling already contains reasons, there is no need for the Client to file a notice of objection. Hence, I find no merit in the Advocate’s contention that the reference is grounded on an invalid notice of objection due to non-payment of filing fees.
8. The Court in *KCB Bank Limited & another v Yeswa Antony Joseph* (Miscellaneous Civil Application No. E022 of 2021) [2022] eKLR, found that:
- “26. In the circumstances, taking into consideration the authorities cited above, I find that the reasons for the Taxing Master’s decision were contained in the decision. It follows that the applicants herein had no reason to delay the filing of this Reference and more so, in filing the same after the elapse of more than 14 days after the delivery of the same, contrary to the stipulations in Rule 11 of the Advocates Remuneration Order. Accordingly, the Reference as filed out of time without leave of court enlarging or extending time for filing of the same is incompetent.”
10. In this case, I note from the impugned ruling that the taxing officer gave the reasons for her findings. Therefore, the Client knew the reasons and had no reason to delay filing the reference. The Client ought to have filed its reference within 14 days of the Ruling, falling on 3rd July 2023 or thereabout. If the Client needed more time to file the reference, it was at liberty to but failed to apply for enlargement of time.
11. The next issue is whether the Advocate’s application for entry of judgment in terms of the certificate of costs is merited. The Client challenged the application on the grounds that the application is misconceived, in bad faith, frivolous and vexatious, incompetent and devoid of merit. However, the Client has not demonstrated as much and therefore, the first and second grounds of opposition fail. Having failed, then the Advocate’s application ought to be allowed.
12. Section 51(2) of the *Advocates Act* provides that:
- “The certificate of the taxing officer by whom any bill has been taxed shall unless it is set aside or altered by the court, be final as to the amount of the costs recovered thereby; and the court may make such order in relation thereto as it thinks fit, including where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”



13. In *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR the Court observed that:

“The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the applicant against the respondent herein for the taxed sum indicated in the certificate of taxation that was issued on November 25, 2012.”

14. The Advocate submitted that she is entitled to interest as she served a notice to levy interest in accordance with the ARO. On the other hand, the Client asserted that the Advocate did not pray for interests in her bill of costs and the same should not therefore be awarded and that the Court can only award interest at Court rates and from the date of the taxation ruling.

15. She relied on Rule 7 of the ARO which provides:

“7. Interest may be charged

An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”

16. The Advocate produced an email dated 5th July 2023, as proof that a notice to levy interest was served on 5th July 2023. Therefore, she is entitled to interest on the expiry of thirty days from the delivery of the bill, being 10th June 2021.

Disposition

- i. The Reference dated 28th August 2023 is dismissed with costs.
- ii. The Advocate’s application dated 6th July 2022 (read 2023) is allowed.
- iii. Judgment is entered in favour of the Advocate against the Client in terms of the Certificate of Costs dated 21st February 2023 for Kshs. 2,095,435/- with 14% interest per annum with effect from 10th June 2021.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Mwangi for Advocate

Ms. Arum h/b for Mr. Musyoki for Client

Court Assistant: Carlos

