



**Mwangi Keng'ara & Company advocates v CYSA International
Limited & another (Miscellaneous Civil Application E275 of 2021)
[2025] KEHC 1136 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E275 OF 2021
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

MWANGI KENG'ARA & COMPANY ADVOCATES ADVOCATE

AND

CYSA INTERNATIONAL LIMITED 1ST CLIENT

JOEL KAMAU KIBE 2ND CLIENT

RULING

1. Before the court are two applications for determination . The first one was filed by the advocate and is dated 6th July 2023 while the second one is dated 28th August 2023 and was filed by the clients.
2. In the first application the advocate essentially sought an order for judgment to be entered in her favour against the client in the sum of Kshs.1,346,156.80 in terms of the certificate of taxation dated 20th June 2023.
3. The second application is a reference whereby the clients sought to set aside and/or review the taxing officer's ruling delivered on 19th June 2023 as well as the award of Kshs. 1,346,156.80 awarded as advocate costs.
4. It would be prudent to consider the second application first as it seeks to set aside the taxing officer's ruling that taxed the advocate's bill of costs at Kshs.1,346,156.80.
5. The application is based on the grounds that the taxing master applied the wrong principles of law and fact in awarding the sum of Kshs. 1,346,156.80 as charged in the bill of costs as she failed to analyse each item and provide the reasons for awarding the amount sought in each item as required by law; that



the deputy registrar erred by proceeding to tax the bill of costs dated 19th April 2021 without giving the clients an opportunity to oppose the same and hence denying the client a fair trial.

6. The clients further argued that the taxing master did not evaluate the dispute of the instruction fees and the value of the subject matter of the bill of costs; that the 2nd applicant is a separate legal entity from the 1st applicant and never issued and/or lacks the authority to give instructions on behalf of the 1st applicant.
7. The clients asserted that the amount awarded by the taxing master was therefore speculative, manifestly excessive and a product of applying the wrong principles of taxation.
8. In opposition to the second application, the advocate filed a replying affidavit sworn by Mercy Mwangi, an advocate practising as such in the firm.
9. She averred that the application is improperly before the court as the client did not file a notice of objection pursuant to rule 11 of the [Advocates Remuneration \(Amendment\) Order](#); that in the absence of proper filing of a notice of objection to the ruling of 19th June 2023 or the client complying with rule 11(2) of the [Advocates Remuneration \(Amendment\) Order](#), the application is incompetent for being filed out of time and without the leave of the court.
10. It was averred further that the application is fatally defective as it ought to be filed as a chamber summons application as provided under rule 11(2) of the [Advocates Remuneration Order](#).
11. Without prejudice to the foregoing, the advocate contended that the clients were accorded a reasonable opportunity to present their case before the ruling of 19th June 2023 was delivered.
12. Based on the foregoing, the advocate prayed to have the second application dismissed with costs.

Analysis and determination

13. The advocate's bill of costs dated 19th April 2021 was taxed on 19th June 2023 for a figure of Kshs.1,346,156.80, and a ruling by the Deputy Registrar rendered thereof.
14. Rule 11 (1) and (2) of the [Advocates Remuneration Order](#) states:
 - “(1) (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.”
15. The clients had fourteen days from the date of which the bill of costs was taxed on 19th June 2023 to file their notice of objection. The clients submitted that they objected to the taxation vide their letter dated 30th June 2023 annexed as 'JK-3' in their supporting affidavit.
16. The advocate on her part submitted that the notice of objection was incompetent due to non-payment of the requisite court filing fees. That the clients' purported notice of objection was filed as a general document in the High Court Commercial, which is zero rated, whereas the judiciary e-filing portal prescribes a court filing fee of Kshs.100.00 for filing of objections to taxation.



17. The clients' notice of objection to the taxing master's decision was through a letter dated 30th June 2023 addressed to the Deputy Registrar whereby they also sought reasons for the decision. The letter was also filed in the judiciary's case tracking system on 3rd July 2023 with zero filing fees paid. The assertion that court filing fees is required while filing a notice of objection to a taxing master's decision was not rebutted by the clients despite the advocate raising the issue.
18. Without the requisite filing fees, a pleading is not competently filed, as was held in the case of *Parkesh Kamlakal Naik & another v CS Ministry of Interior and Coordination of National Governments and 2 others* [2017] eKLR:

“The ex parte applicants cannot hide under the principle espoused in Article 159 of the *Constitution* that justice shall be administered without undue regard to procedural technicalities. Failure to pay court filing fees is not a procedural technicality as it goes to the substance of the main pleading which cannot be deemed to be filed without court filing fees being paid and acknowledgement receipt issued to that effect unless exempted by law or by the court on application.”
19. Even if the notice of objection was filed competently, the reference application before the court was filed in the form of a notice of motion and not a chamber summons contrary to Rule 11 (2) of the *Advocates Remuneration Order*.
20. Based on the foregoing, the court finds that the second application was incompetently filed and is dismissed with costs.
21. In respect of the first application, the advocate prayed for the court to enter judgment in her favour in accordance with the certificate of taxation dated 20th June 2023. The advocate also prayed to be awarded interest on the taxed costs of Kshs.1,346,156.80 at the rate of 14% per annum with effect from 10th June 2021 until payment in full.
22. The basis of the application was that the advocate-client bill of costs dated 19th April 2021 was taxed on 19th June 2023 at Kshs.1,346,156.80 and a certificate of taxation issued on 20th June 2023.
23. In opposition the clients filed grounds of opposition dated 14th February 2024 whereby it was argued that the advocate did not pray for interests in her bill of costs and the same should therefore not be awarded and that the court can only award interest at court rates and only from the date of the taxation ruling.
24. A background of this dispute is that after the advocate filed her bill of costs, the client disputed issuing any instructions. This issue was determined by the court whereby it was held that an advocate-client relationship did exist between the parties.
25. The Deputy Registrar then delivered a ruling on 19th June 2023 and noted that the client had only challenged the bill of costs on the issue of lack of instructions.. She then proceeded to hold that the bill of costs was drawn to scale and taxed the same at Kshs.1,346,156.80.
26. Section 51(2) of the *Advocates Act* states:

“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 covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where



the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

27. In this case, the taxing master taxed the costs and the reference filed against it has, in this ruling, been dismissed for being incompetently filed. Therefore, there exists no other action barring the court from entering judgment against the clients for the taxed sum indicated in the ruling of 19th June 2023.
28. As for interest, the aforementioned bill of costs, annexed in the advocate’s supporting affidavit of 6th July 2023, included a provision stating that outstanding fees would attract interest at the rate of 14% per annum on expiry of 30 days from the date of service thereof.
29. Rule 7 of the [Advocates Remuneration Order](#) states:

“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.”
30. In light of the above provision and the fact that the taxing master essentially adopted the bill of costs as drawn, the court finds merit in the first application and grants it as prayed.

Final Orders

31. Application dated 6th July 2023 by the advocate is granted as prayed. The application dated 28th August 2023 by the clients is dismissed with costs awarded to the advocate.

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

