



REPUBLIC OF KENYA



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Wacira Wambugu & Company Advocates LLP v Musimba (Miscellaneous Civil Application E951 of 2020) [2025] KEHC 9389 (KLR) (Commercial and Tax) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E951 OF 2020**

AA VISRAM, J

JUNE 26, 2025

BETWEEN

WACIRA WAMBUGU & COMPANY ADVOCATES LLP APPLICANT

AND

PATRICK MWEU MUSIMBA RESPONDENT

RULING

Introduction and Background

1. On 28th October, 2021, the court's Deputy Registrar delivered a ruling ("the Ruling") in which he certified the sum of Kshs. 725,916.00/- as due to the Applicant ("the Advocates"), which sum was in respect of a Bill of Costs dated 6th August, 2020 ("the Bill of Costs").
2. The Advocates had stated that they had represented the Respondent ("the Client") in the transfer of a property from one Gathuki Ng'ang'a to M&M Consulting a company belonging to the Client.
3. By a Chamber Summons dated 11th September, 2023, and made under Sections 1A, 1B & 3A of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya), Paragraphs 11(2) & (4) of the *Advocates (Remuneration) Order* ("the Order"), the Client now seeks to be granted leave to file a Reference out of time against the Ruling, and that after such leave is granted, the Reference be deemed to be duly filed in time, further, that the Ruling be set aside, and that the court re-assess the issue of whether the Client instructed the Advocate; and make a findings in respect of the same.
4. In the alternative, and without prejudice to the foregoing, the Client further seeks an order that this Court do remit the Bill of Costs to another Taxing Officer for review and reconsideration as regards the question concerning the existence of an Advocate-Client relationship between the parties.



5. The Client has grounded his Application on the grounds set out on the fact of the Application and the Client's Supporting Affidavit sworn on 11th September, 2023. The Advocates oppose the Application through the Notice of Preliminary Objection dated 29th November, 2023.
6. In line with the court's directions, the parties filed written submissions in support of their respective positions, which together with the pleadings, I have considered, and will make relevant references to as part of my analysis and determination below.

Analysis and Determination

7. I propose to first deal with the Advocates' Objection which is premised on the grounds that the Reference is filed out of time without seeking leave of the Court and that the same offends Paragraph 11(2) of the Order because it has been filed one year later from the date the Ruling was delivered. The Advocates contend that the Application offends the importance of adherence to the laid down procedure in approaching a court of law, and that the Chamber Summons should accordingly be dismissed with costs.
8. In response, the Client submits that the Objection does not meet the threshold set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd.* (1969) EA 696, that for one to succeed in a Preliminary Objection, the facts pleaded by the other party are assumed to be correct; it must be a matter of law which is capable of disposing off the suit; it must not be blurred by factual details calling for evidence; and it must not call upon the Court to exercise discretion. The Client submits that the Objection does not raise any point of law and that the application is based on disputed facts; and that it has sought the Court's leave to enlarge time to allow the Applicant to file the Reference out of time. He submitted that the Reference has not been filed and remains so until such time as the Court may allow the same.
9. I agree with the above submission. The Reference will be deemed as filed only after leave of the court is granted. In any event, I am inclined to agree with the Client, that whether or not he has sought leave of the court prior to the filing of the Reference, is a disputed issue that cannot be canvassed by way of an Objection as the court will have to refer to the record and the evidence to ascertain the true position. This alone in my view leads me to the conclusion that the present Objection does not fit within the confines of what constitutes a Preliminary Objection as set out in Mukisa(supra) above and as a result, the same is dismissed.
10. Turning to the merits of the Application, the Client first seeks the Court's leave to file his Reference out of time. He states that in as much as the Ruling was orally delivered on 28th October, 2021, he became aware of the reasons for the same when he obtained a copy of the Ruling on 18th August, 2023. The Reference ought to have been filed pursuant to Paragraph 11 (2) of the Order on or before 18th September, 2023, being the 14th day following the receipt of the reasons.
11. The Client avers that his failure to file the Reference in time was not deliberate because he was only supplied with a copy of the Ruling on 18th August, 2023, and only managed to appear before a Commissioner of Oaths for purposes of executing an Affidavit on or about 11th September, 2023. He submitted that the delay was not inordinate, and was occasioned by a number of procedural events that were beyond his control.
12. The parties agree that Paragraphs 11 and 12 of the Order outline the timelines and procedures to be followed once a party seeks to object to a Taxing Master's decision as follows: -



- (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. (Emphasis mine)
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13. Paragraph (4) goes to state that this Court "...shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2)..." From the Client's deposition, it has not been disputed that through his Advocate's letter of 1st November, 2022, he requested a copy of the Ruling from the court, and a receipt was issued by the court. Evidence of the same is annexed and forms part of the record.
 14. The Client's Advocate, also wrote a letter to the court dated 10th November, 2021, formally objecting to the Ruling, and further requested for reasons of the Ruling. The Client further annexed email correspondences between his Advocate and the court which demonstrate that he made efforts to follow up on the Ruling. Based on the record he was eventually informed that the same was ready for collection on 16th August, 2023. This corresponds with the Applicants version of events concerning his reason for delay.
 15. As regards the explanation and period of delay, the Applicant admitted that he ought to have filed the Reference by 1st September, 2023. He deponed that the reason for the delay was because it was not until 11th September, 2023, that he was able to appear before a Commissioner of Oaths to have his deposition commissioned. He has further admitted that the period of delay is 11 days.
 16. In my view the delay is not prolonged, and I find the explanation to be reasonable in the circumstances as outlined above. I am persuaded that the delay was not occasioned by any fault of his own but by factors beyond the Applicant's control, including, the delay by the court to supply him with a copy of the Ruling.
 17. Based on the reasons set out above I exercise my discretion and grant leave to the Applicant to file the Reference out of time. The same is deemed to be properly filed and served within time.
 18. Leave having been granted, and the Reference being properly on record, I now turn to determine its merits. The Client has cited the following grounds as reasons as to why the Ruling ought to be reviewed and set aside; and that the court reassess the issue concerning the Advocate-Client relationship between the parties: -
 - i. That the Taxing Master erred in determining that an Advocate-Client relationship between the Applicant and the Advocate /Respondent (hereinafter referred to as "Respondent") existed for reasons that the Applicant was the borrower when the work done by the Advocate arose from a Sale Agreement between George Gathuki Ng'ang'a and M&M Consulting Limited.
 - ii. That the Taxing Master erred by failing to consider and acknowledge that under item 1 of the Respondent's Bill of Costs, the Respondent in its narrative confirmed that it received instructions to act on behalf of M&M Consulting Limited in the purchase of the subject property.



- iii. That the Taxing Master misdirected himself in determining the transaction emanated from a charge document when the same emanated from an Agreement for Sale supplied by the Respondent.
 - iv. That the Taxing Master misdirected himself in determining the instructions emanated from the Applicant who is a director of the company, M&M Consulting Limited, that issued the instructions to the Respondent.
 - v. That the Taxing Master erred by failing to consider and acknowledge that the Bill of Costs identified that the work done was for the benefit of M&M Consulting Limited, a separate legal entity capable of suing and being sued.
 - vi. That the Taxing Master erred by failing to consider that the Respondent had not established a case to disregard the veil of incorporation
 - vii. That the Taxing Master erred by failing to consider and acknowledge that the Bill of Costs was wrongly brought against the Applicant and any claim for outstanding legal should have been directed to the company.
 - viii. That the Taxing Master erred in law and fact by taxing the Bill of Costs without jurisdiction as there is no existence of an Advocate-Client relationship between the Applicant and the Respondent.
19. The Client submitted that the subject transaction emanated from an Agreement for Sale, and not a charge document; that the Client never instructed the Advocates to act on his behalf; and that the Advocates did not furnish any document to establish instructions in respect of the Bill of Costs emanating from the Client.
20. In his decision, the Deputy Registrar held that the parties' Advocates-Client relationship stemmed from the fact that in the subject transaction, the Client was the borrower and that Paragraph 31 of the [Order](#) places the obligation of paying the Advocates fee on the borrower. The said provision provides as follows: -
31. Costs of mortgage to be paid by borrower
- The costs of a mortgagee for the investigation of title and the preparation, completion and registration of his security or of any discharge or assignment thereof made at the request of the borrower, whether or not the transaction is completed, shall be payable to the borrower, but any commission due to the mortgagee's Advocate for negotiating the loan shall be payable by the mortgagee. (Emphasis Mine)
21. In the Bill of Costs, the Advocates indicated that the instruction fees was in respect of
- "...taking instructions to act on behalf of the Client in the transfer of land from George N'gan'ga to M&M Consulting Limited, the Client's company..." (Emphasis mine). The Advocates submitted before the Deputy Registrar that the Client had instructed them to act on behalf of his company, and that he was thus the Client as per the definition of "Client" set out in Section 2 of the [Advocates Act](#) that '...includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an Advocate and any person who is or may be liable to pay to an Advocate any costs' . (Emphasis mine).



- 22. The Advocates thus maintained that the Client issued instructions on behalf of his company, and he relied on the decision of the court in *Ngatia & Associates Advocates v Interactive Gaming & Loteries Limited* [2018] KEHC 820 (KLR) where it was held that this definition shows that a person can retain or employ an Advocate on his behalf or on behalf of another, and that the said definition accordingly corresponds with the narration of item 1 of the bill of costs therein.
- 23. Having considered the authority relied upon, I am of the opinion that the present matter is similar to the aforementioned case, and I find that indeed, the definition of ‘Client’ corresponds with the Advocates’ narration of Item No. 1 of the Bill of Costs. I say so noting that the Client admitted that he instructed the Advocates to act on behalf his company, it therefore follows that it was him, and not the Company, that is the Client. In the circumstances, and accordingly, I find that the Deputy Registrar reached a reasonable conclusion in respect of this issue and I decline to interfere with the same. Conclusion and Disposition
- 24. Based on the reasons set out above, the Client’s Reference dated 11th September, 2023, is dismissed with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 26TH DAY OF JUNE, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Sakina

.....for Plaintiff

.....for Defendant

