



Kitulu t/a Muema Kitulu & Co Advocates v Maundu (Miscellaneous Civil Application 820 of 2013) [2025] KEHC 11944 (KLR) (Civ) (25 June 2025) (Ruling)

Neutral citation: [2025] KEHC 11944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION 820 OF 2013

SN MUTUKU, J

JUNE 25, 2025

BETWEEN

MUEMA KITULU T/A MUEMA KITULU & CO. ADVOCATES APPLICANT

AND

JOHN BOSCO NGETA MAUNDU RESPONDENT

RULING

The Chambers Summons

1. This Ruling relates to the Chamber Summons Reference dated 23rd June 2021 (the Reference) brought by Muema Kitulu T/A Muema Kitulu & Co. Advocates (the Applicant) under Sections 3, 3A and 63(e) of the *Civil Procedure Act* (CPA) and Paragraph 11(2) of the Advocates (Remuneration) Order. It is supported by the grounds set out on its face and in the Supporting Affidavit of the Applicant. It seeks an order for setting aside, review and/or substitution of the taxation ruling delivered on 21st May 2020 dismissing the Applicant's Supplementary Advocate-Client Bill of Costs dated 26th July 2019 (the Supplementary Bill of Costs).
2. In the grounds Supporting the Reference, the Applicant has stated that he filed an Advocate-Client Bill of Costs dated 19th August 2013 (the Bill of Costs) seeking a sum of Kshs. 1,171,933.72 against John Bosco Ngeta Maundu (the Respondent) arising out of legal representation and services rendered by the former to the latter in High Court Civil Case No. 1165 of 2003 (formerly High Court Civil Case No. 24 of 1997) ("the suit") wherein judgment was entered in favour of the Respondent, to the tune of Kshs. 800,000/-.
3. The Applicant has stated that the Bill of Costs was taxed at a sum of Kshs. 636,803/- and a ruling to that effect was delivered on 10th September 2013. That subsequently, the Respondent sought to challenge the ruling on the allegation that the Applicant had withheld a sum of Kshs. 721,000/- paid to him and



resulting from the judgment sum awarded in the suit. That in addition, the Respondent claimed to have previously made various payments to the Applicant, totaling a sum of Kshs. 251,080/- and which sum ought to therefore be deducted from the outstanding fees/costs.

4. It is the Applicant's averment that upon a consideration of the Respondent's application, the court vide a ruling delivered on 31st March 2017 directed that the taxing master undertakes accounts as between the parties herein and that upon the taxing master's compliance, the court entered judgment in favour of the Applicant on 13th April 2019, in the sum of Kshs. 404,193/-.
5. It is equally the Applicant's averment that owing to the lengthy litigation between the parties herein, the Applicant proceeded to file a Supplementary Bill of Costs seeking an additional sum of Kshs. 222,203.90, which was dismissed vide a ruling delivered on 21st May 2020, hence the instant Reference.
6. The Applicant has deposed that the taxing master's reason for dismissing the Supplementary Bill of Costs is unsupported in law and was made in total disregard of the Applicant's entitlement to additional costs incurred following the original taxation process.

The Replying Affidavit

7. The Respondent swore a replying affidavit on 13th July 2021 in opposition to the Reference in which it was deposed that the Reference is unsubstantiated and is also an abuse of the court process since the same fails to disclose any clear error or mistake on the part of the taxing master; that following delivery of the initial taxation ruling on 10th September 2013 the Applicant never undertook any additional legal work on behalf of the Respondent, in order to warrant a claim for additional costs in legal fees by way of the Supplementary Bill of Costs and that no costs were awarded to the Applicant in the present matter following the initial taxation ruling in order to justify the filing of any further Bill of Costs.
8. The Respondent has deposed, further, that following the initial ruling on taxation, he was represented by a different firm of advocates and not the Applicant and that in the circumstances, the taxing master acted correctly by dismissing the Supplementary Bill of Costs. He urged this court to dismiss the instant Reference for want of merit.

Submissions

9. The Reference was disposed of by way of written submissions. In his submissions the Applicant relied on *Republic v Rosemary Wairimu Munene, Ex-Parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd* Judicial Review application No. 6 of 2014 and Section 27(1) of the CPA on the subject of costs, and submitted that where a party has incurred costs in prosecuting or defending a matter, such party is entitled to costs upon success; that while the court did not make any specific pronouncements on the issue of costs following the original taxation ruling, it did not necessarily deny the Applicant an award of costs and that the Applicant was entitled to the respective costs sought in the Supplementary Bill of Costs.
10. The Applicant urged that this court be persuaded by the following reasoning applied in the case of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] KEHC 7064 (KLR) that:

“The words “the event” mean the result of all the proceedings to the litigation. The event is the result of the entire litigation. It is clear however, that the word “event” is to be regarded as a collective noun and is to be read distinctively so that in fact it may mean the “events” of separate issues in an action. Thus, the expression “the costs shall follow the event” means that the party who on the whole succeeds in the action gets the general costs of the action, but that, where the action involves separate issues, whether arising under different causes of



action or under one cause of action, the costs of any particular issue go to the party who succeeds upon it. An issue in this sense need not go to the whole cause of action, but includes any issue which has a direct and definite event in defeating the claim to judgement in the whole or in part”

11. The Applicant has further urged this court to consider the case of Peter Julius Njoroge v Fidelity Commercial Bank Limited & another [2018] KEHC 6374 (KLR) where the High Court allowed a Reference challenging a ruling by a taxing master dismissing the Bill of Costs filed in the said matter.
12. On the premise of the foregoing arguments, the court has been urged to find the dismissal made by the taxing master to be flawed and erroneous, and to allow the Reference as prayed.
13. The Respondent relied on the Replying Affidavit.

Analysis and Determination

14. I have read and considered the Reference and the grounds supporting it. I have read and considered Replying Affidavits and the written submissions on record, the law and the authorities cited. I have also read the court file. I have noted that the Applicant filed the Bill of Costs seeking a sum of Kshs. 1,171,933.72 against the Respondent, on the basis of legal fees/costs for services rendered by the former and on behalf of the latter in the suit. The Bill of Costs was taxed at Kshs. 636,803/-.
15. The taxed amount was challenged on the basis that the Applicant had previously withheld part of the decretal sum awarded to the Respondent in the suit, and that there were additional payments previously made to the Applicant in legal fees. The court by way of a ruling delivered on 31st March 2017 issued directions for the Taxing Officer to undertake accounts between the parties, upon which the court entered judgment in favour of the Applicant on 13th April 2019 in the sum of Kshs. 404,193/-.
16. Thereafter, the Applicant filed a Supplementary Bill of Costs dated 26th July 2019 seeking an additional sum of Kshs. 222,203.90. This was dismissed vide a ruling delivered on 21st May 2020, prompting the instant Reference which seeks to substitute and/or set aside the said ruling.
17. It is settled that courts will not normally interfere with the exercise of discretion by the Taxing Officer unless there is an error of principle in assessing the costs on the part of the Taxing Officer. This position was held by the Court of Appeal in the case of Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR the Court of Appeal held thus:

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”
18. The Court reasoned that an error of principle would include an excessive award of costs or an overemphasis on factors such as the nature and complexity of the matter at hand and reaffirmed the above legal position in the case of Moronge & Company Advocates v Kenya Airports Authority [2014] eKLR.
19. Upon perusal of the impugned ruling, I have observed that in dismissing the Supplementary Bill of Costs, the Taxing Officer reasoned that at the time of filing the said Bill of Costs, there was nothing to indicate that the Applicant had received any additional instructions to either act for or to offer any legal services to the Respondent, and could not therefore purport to claim costs thereon. The Taxing Officer further reasoned that the Applicant could not file a Party and Party Bill of Costs either, since



no order on costs was issued in his favour by the court and consequently the Taxing Officer dismissed the Supplementary Bill of Costs for being defective and made no order as to costs.

20. I have re-examined the record. It is not in dispute that the Applicant acted for the Respondent in the suit, which gave rise to the present Miscellaneous matter by way of an Advocate-Client Bill of Costs which was taxed in the manner set out hereinabove.
21. The above notwithstanding, I have noted that the Respondent herein was at all material times represented by the firm of Wamalwa Abdi and Co. Advocates, in the present proceedings, pursuant to a notice of appointment of advocates dated 20th January 2014. It is also apparent from the record that the firm of Musungu & Co. Advocates later took over from the aforementioned firm of advocates. Suffice it to say that, there is nothing on the record to demonstrate that the Applicant acted for the Respondent in the present Miscellaneous proceedings at all.
22. In the absence of any credible material to indicate that the Applicant received any instructions from the Respondent to act on his behalf or to undertake any additional legal work on his behalf in respect of the present matter and following the original taxation proceedings, I agree with the reasoning of the Taxing Officer that there was no basis upon which the Applicant could claim advocate-client costs.
23. Further to the foregoing, upon the court's perusal of the record, it did not come across anything to indicate that any costs were subsequently awarded to the Applicant by the court, following the original taxation proceedings, in order to justify any claim for Party and Party costs in any event. While I am alive to the legal principle that costs follow the events, it is also trite that an award of costs lies with the discretion of the court and is determined on a case-to-case basis.
24. In view of all the foregoing, I am satisfied that the Taxing Officer's decision to dismiss the Applicant's Supplementary Bill of Costs is well founded and I have no reason to disturb it.
25. Consequently, I find that the Chamber Summons Reference dated 23rd June 2021 is not merited and is hereby dismissed. I make no order as to costs.
26. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 25TH JUNE 2025.

S. N. MUTUKU

JUDGE

In the presence of:

1. Mr. Kiamba holding brief for Mr. Muema Kitulu for the Advocate/Applicant
2. Mr. Were holding brief for Mr. Musungu for the Respondent

