



Mungla & Company Advocates v Patel (Commercial Miscellaneous Application E299 of 2023) [2025] KEHC 11430 (KLR) (Commercial and Tax) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E299 OF 2023**

**PJO OTIENO, J
JULY 29, 2025**

BETWEEN

PAUL MUNGLA & COMPANY ADVOCATES ADVOCATE

AND

SUNDIP JAGDISHRO PATEL CLIENT

RULING

1. There are presently two applications pending determination before the Court. The first is a Chamber Summons dated 25th October 2024, filed by the Objector/client seeking partial setting aside of the taxation. The second is a Notice of Motion dated 18th March 2025, instituted by the Advocate/Applicant and seeking judgement on the certificate of taxation.
2. Because the objection stalls enforcement of the certificate of costs, the court shall consider the chamber summons first and only deal with the Notice of motion in the event the objection fails in the event of the success of the objection, the Notice of motion will stand dispensed with in that in the absence of a certificate of taxation, there would be no efficacious reason to consider an application seeking to enforce the taxed costs. For the sake of flow and coherence of the decision, the court shall set out the facts disclosed in the papers filed.
3. The Chamber Summons is premised upon Paragraph 11 of the Advocates (Remuneration) Order. Through this application, the Objector seeks orders for partial setting aside and/or variation of the ruling delivered by the Taxing Officer on 11th October 2024 and prays that he be awarded the costs of the application.
4. The application is premised on the grounds disclosed on the face of the application and reiterated in the affidavit sworn and filed by the objector/client in support thereof. In the affidavit, deponent faults the impugned ruling by the Taxing Officer, dated 11th October 2024, on the Bill of Costs dated 10th April



2023 by asserting that the Taxing Officer misapplied the governing legal principles, thereby arriving at an inordinately excessive taxed sum. It is further contended that the Taxing Officer failed to consider pertinent factual and evidentiary material adduced in support of the existence of an agreement on legal fees and proof of partial payment.

5. The application is opposed through a replying affidavit sworn on 19th November 2024 by the Advocate/Applicant, Paul Otieno Mungla. In the said affidavit, the deponent supports the findings of the Taxing Officer, stating that no agreement existed as regards legal fees. He maintains that the reasons provided by the Taxing Officer are grounded in sound legal principles and further avers that any prior payments by the Objector are only relevant at the execution stage, not during taxation. To the objector/client the application lacks merit and is a candidate of dismissal.
6. On the other hand, the Notice of Motion is brought under the provisions of Section 51(2) of the Advocates Act and Order 51 Rule 1 of the Civil Procedure Rules. It seeks entry of judgment in favour of the Advocate/Applicant for the sum of Kshs. 18,101,000/= as taxed and certified in the certificate of costs.
7. The application is premised on the grounds disclosed on its face and on the affidavit sworn by the Applicant on 18th March 2025. It is deponed in that affidavit that, following taxation of the Bill of Costs on 6th November 2024 and its certification at Kshs. 21,640,000/-, the Objector only made partial payments amounting to Kshs. 3,539,000/=, thus leaving an outstanding balance of Kshs. 18,101,000/=, which is now the subject of the judgment sought in the application.
8. The Respondent/Objector has opposed the said application by filing Grounds of Opposition dated 27th March 2025. The central contention is that the Notice of Motion is premature given that a reference challenging the taxation, dated 25th October 2024, remains pending before this Honourable Court.
9. To canvass the application, it was agreed that the parties file and exchange submissions. Both sides did comply by filing submissions which address the two applications. Below is just but a summation of the submissions.

Submissions by the Objector/Respondent

10. The Objector submits that the Taxing Officer applied erroneous legal principles in taxing the Bill of Costs dated 19th April 2023. It is argued that there existed a valid agreement as to fees between the parties, contrary to the Taxing Officer's determination. In support, the Objector invokes Section 46 of the Advocates Act, which permits advocates and clients to enter into written agreements regarding remuneration. Given the Act's silence on the form of such agreements, the Objector relies on Section 83J of the Kenya Information and Communication Act, which acknowledges that contracts may be validly formed through electronic communications, such as emails.
11. The Objector relies on an email dated 15th March 2022 in which the Advocate proposed a legal fee of 2% of the amount claimed, and which proposal, it is alleged, was endorsed by the Objector, thereby demonstrating consensus.
12. Regarding the claim that the Notice of Motion is premature, the Objector refers to *Lubullellah & Associates Advocates v N.K. Brothers Limited* [2014] eKLLR, wherein it was held that once a certificate of taxation is issued and no reference is pending, the court need only enter judgment. The Objector argues that, in the present instance, because a reference is pending, the court is precluded from entering judgment.



13. The Objector posits that a judgment pursuant to a certificate of taxation may only be entered where the existence of the retainer is not in dispute and where no reference is pending.

Submissions by the Advocate/Applicant

14. The Advocate disputes the existence of any agreement on legal fees as anticipated under the statute. He refers the court to correspondence between him and the client to email correspondence between the parties and dated 11th March 2022, by the client by which he sought to be sent a letter confirming the agreed fees at 2% upon completion and otherwise paid by the defendant.
15. In response, by email dated 15th March 2022, the Advocate clarified that his fee would be 2% of the amount claimed and was payable by the client and not the defendant adding that he was open to discussing a payment plan. The client replied on 17th March 2022 indicating that the fees would be discussed at an in person meeting between the two.
16. The Advocate contends that no consensus was reached, as the Objector never clearly agreed on the basis for the 2%, whether on the judgment sum or amount claimed.
17. The Advocate further contends that the parties failed to agree on who is to pay the legal fees because whereas the Objector proposed that the fees be paid by the defendant, the advocate was adamant that the fees be paid by the Objector.
18. The Advocate further avers that in a bid to settle the matter amicably, he offered to accept Kshs. 10 million if paid within 30 days from 11th November 2022, failing which the full amount would become payable. No response was made to that offer nor was any payment was made pursuant to the proposal.
19. On the argument that prior payments were not considered in taxation, the Advocate concedes to receiving part payment but submits that under the Advocates Remuneration Order, such payments are to be accounted for at the execution stage, not during taxation.
20. He accordingly prays that the reference be dismissed with costs.

Issues, Analysis and Determination

21. Because the fulcrum of the objection is the alleged agreement on fees, the central issue for resolution is whether the email correspondence exchanged between the parties constitutes an enforceable agreement for legal fees within the meaning of Section 45 of the *Advocates Act*.
22. Section 45(1) of the *Advocates Act* permits an advocate and a client to enter into a written agreement on fees, which shall be valid provided it is signed by the client or their duly authorized agent.
23. It is not in doubt that a contract demanding to be in writing must not be in a single document but can be construed in a series of document provided the same evidence consensus ad idem. It is thus perfectly acceptable in law that email communications exchanged between negotiating parties, in appropriate circumstances, may constitute a written agreement capable of satisfying Section 45 of the Act.
24. For such an agreement to be enforceable, its terms must be unequivocal, express mutual assent, and be entered into freely and voluntarily. The decision in *Nzaku & Nzaku Advocates v Tabitha Waithera Mararo* [2020] eKLR reinstated for the proposition of the law that an agreement for fees contemplated under section 45, is a contract whose terms and conditions must be clear and unambiguous.
25. Upon careful scrutiny of the emails exchanged from 10th March 2022 to 29th June 2023, the Court is unable to discern a binding agreement on fees. The Objector's request for a written fee letter and the Advocate's response offering differing terms, followed by a proposal for a meeting to discuss the



matter later indicate the absence of consensus ad idem. Because there was never meeting of minds on the fees chargeable and how the same would be computed, the court finds that there was never a fee agreement and that the taxing master was apt in the exposition of the law applicable. That decision is beyond challenge on the law as it stands.

26. Because taxation also invites judicial discretion by the taxing master, the circumstances in which a Judge will interfere with the decision of a Taxing Officer are well settled and indeed limited. In *Bank of Uganda v Banco Arabe Espaniol*, Supreme Court Civil Application No. 29 of 2019, the court had this to say;

“...save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs, are matters which the taxing officer is particularly fitted to deal, and which he has more experience than the judge. Consequently, a judge will not alter a fee allowed by a taxing officer, merely because in his opinion, he should have allowed a higher or lower amount...Even if it is shown that the taxing officer erred in principle, the judge should interfere only if satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties.”

27. The Taxing Officer in the ruling delivered on 11th October 2024 did acknowledge that payments had been alleged but noted the absence of documentary evidence such as cheques or receipts to verify the same. The taxing officer delivered himself as follows: -

“The respondent in his replying affidavit had indicated that he had made payment of Kshs 2,850,000 and had supplied the Taxing Officer with a statement written “Paul Mungla payment breakdown with various amounts indicated therein and a final figure of Kshs 2,850,000/- tallied at the bottom. However, the respondent has not attached any proof of the actual payment including the three cheques for Kshs 2,000,000 indicated in the statement. The Taxing Officer is unable to verify the correctness of the statement this I did not consider it when tallying the amount due to the advocate.”

28. The Court appreciates that in taxation, the trier of facts is more adept and suited to analyze, examine and conclude on the fact availed. The court concurs with the taxing officer that even in taxation the decision must be based on evidence. The onus to prove payment was upon the client/Respondent. He was to satisfy the taxing officer that some payment had been made. He failed to do so and the taxing master cannot be faulted in its determination.

29. The Advocate has contended that any payments made by the Objector ought to be considered only at the stage of execution and not during the taxation of costs. It is however, the considered view of the Court that, in a scenario such as the present one, the principal purpose of a Bill of Costs is to delineate and quantify, in a detailed and itemized manner, the legal fees and disbursements incurred by the Advocate in the course of rendering professional services. In fact, a bill properly drawn ought to give credit for sums received from the client to reduce the sum claimed. It serves as the procedural vehicle for establishing the total monetary obligation owed by the client to the Advocate. Consequently, if the court is tasked with the determination of the actual amount due and payable, it is not only arithmetically logical but also in the interests of justice and procedural fairness that any sums previously received by the Advocate from the Client be taken into account at the taxation stage. This would ensure the resulting taxation reflects the just amount owing and forestalls the risk of overstated or inflated claims. The court finds that the taxing master was cognizant of that demand hence the interrogation



as to whether any money had been paid and concluding that none had been demonstrated by evidence to have been paid.

30. It is however comforting, and it satisfies the court, that in his application for judgment, the advocate has admitted having received Kshs. 3,539,000/= for which he has given credit. The court is satisfied that the no prejudice will visit the client because what is demonstrated to have been paid by him has been admitted.
31. It is thus the finding by the court that the threshold for setting aside a decision of the taxing master has not been met with the concomitant result that the application for setting aside fails and is thus dismissed with costs.
32. The foregoing determination sets stage for the determination of the advocate's application for judgment on the taxed costs. It is noted from both the soft and physical file of the case file that the client only filed grounds of opposition and mounted the formidable objection based on the law that before the objection is dealt with, the certificate is not final to form a pedestal for a judgment on the certificate of costs. Beyond that opposition, and with the determination on the objection as above, there is no other basis to resist the application. The application remains uncontested and with the certificate becoming final, there cannot be any basis to decline the request for judgment.
33. The certificate of taxation which has become final taxed the advocates costs in the sum of Kshs. 21,640,000/=. Of that sum, the advocate admits having been paid a sum of Kshs 3,539,000/=. When that sum is taken account of towards the reduction of the taxed costs, the court gets a sum of Kshs 18,101,000. That is the sum the court finds to be justly due to the advocate from the client for which the court enters a judgment.
34. Accordingly, judgment is hereby entered in favour of the Advocate against the client in the sum of Kshs. 18,101,000/=.
35. In accordance with Rule 7 of the Advocate Remuneration Order, that sum attracts interest at 14% per annum, from the date of the bill, because there are no details when the itemized bill was served upon the client, till payment in full.
36. Given that this is an advocate/client taxation which ought not to attract further taxation, and while cognisant of the fact that no advocate is entitled to instructions fees on taxation, the court assesses the costs of these proceedings at Kshs 40,000 to cover both applications.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF JULY, 2025.

PATRICK J O OTIENO

JUDGE

