



**Millimo, Muthomi & Co Advocates v Kiru Tea Factory Company  
Ltd (Commercial Miscellaneous Application E622 of 2023)  
[2025] KEHC 12279 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12279 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E622 OF 2023**

**H NAMISI, J  
AUGUST 29, 2025**

**BETWEEN**

**MILLIMO, MUTHOMI & CO ADVOCATES ..... ADVOCATE**

**AND**

**KIRU TEA FACTORY COMPANY LTD ..... CLIENT**

**RULING**

1. The Notice of Motion dated 5 September 2024 seeks the following orders:
  - i. Spent
  - ii. Spent
  - iii. That this Honourable Court be pleased to strike out/dismiss the Advocate-Client Bill of Costs dated 11 July 2023;
  - iv. That the costs of this Application be awarded to the Applicant.
2. The Application is premised on the following grounds:
  - i. The Advocate-Client Bill of Costs dated 11 July 2023 presupposes that the Applicant instructed the firm of Millimo Muthomi & Company Advocates to represent it in Tax Appeal No. 225 of 2019 whereas that is not the case;
  - ii. There exists no agreement whatsoever creating an Advocate-Client relationship between the Applicant and the Respondent to warrant the taxation sought;



- iii. In the absence of an Advocate-Client relationship, the Advocate-Client Bill of Costs dated 11 July 2023 wrongfully invokes the jurisdiction of the Taxing Master who does not have jurisdiction to tax the same;
- iv. The Advocate-Client Bill of Costs dated 11 July 2023 aims to unjustly enrich the Respondent at the Applicant's expense and ought to be struck out forthwith;
- v. It is in the infinite interests of fairness and justice that the prayers sought in this Application are granted.

### **Background of the Application**

3. The Applicant is a public company owned by over 9,000 tea growers in Murang'a county. The Applicant is also a shareholder in various companies, one of them being Kenya Tea Development Agency – Holding Limited (KTDA-HL). KTDA-HL's objective is to enter into agreements with companies such as the Applicant for the processing of green leaf, which management services it carries on through its subsidiary, Kenya Tea Development Agency Management Services Ltd (KTDA-MS).
4. The genesis of the present dispute lies in a tax appeal, Nairobi Tax Appeal No. 225 of 2019, between Kiru Tea Factory Company Ltd and The Commissioner of Domestic Taxes. This matter, which concerned a tax demand of Kshs 19,762,441/=, was concluded on 9 October 2020 when parties recorded a consent. The Applicant avers that while acting on the Objection received from the Kenya Revenue Authority, KTDA-HL, being a distinct company from the Applicant, took it upon itself to instruct the Respondent firm to lodge an appeal to the Tax Appeals Tribunal on behalf of the Applicant and all other factories who has been issued with tax demands.
5. Following the conclusion of the appeal, the Respondent filed an Advocate-Client Bill of Costs dated 11 July 2023 for the legal services rendered.
6. The Applicant further avers that the Respondent would send updates on the tax appeal to KTDA-MS, and equally forwarded their final fee note. It is the Applicant's contention that at all material times, the Respondent was engaging a person other than the Applicant. There have never been instructions from the Applicant to Respondent to warrant the filing of the Bill of Costs dated 11 July 2023.
7. The Respondent opposed the Application, contending that that an Advocate-Client relationship did, indeed, exist. The Respondent maintains that KTDA-MS, acting as the Applicant's Managing agent, provided the instructions, and the Applicant subsequently benefited from their services without raising any objection. The Respondent characterised the Applicant's current objection as an afterthought, raises only after the Bill of Costs was presented for taxation.
8. Parties canvassed the application by way of submissions. The issues framed for determination by the parties are two-fold: (i) whether there was an Advocate-Client relationship between the parties; and (ii) whether the Advocate-Client Bill of Costs dated 11 July 2023 ought to be struck out.

### **Analysis and Determination**

9. I have carefully considered the Application, responses and the submissions herein.
10. The Applicant's contention is that there was no Advocate-Client relationship existing between the parties. It is the Applicant's position that the Respondent's own documentary evidence clearly indicates KTDA-HL as the instructing client, and that all relevant correspondence concerning the matter was directed to KTDA-HL, and not to the Applicant. The Applicant submitted that the



Respondent has failed to adduce any evidence demonstrating conduct on the part of the Applicant that would infer an Advocate-Client relationship.

11. To buttress its argument, the Applicant relied on the case of Uhuru Highway Development Ltd & Others -vs- Central Bank of Kenya & Others [2002] 2 EA 654 (CAK), which held that the client relationship must be discerned from a careful consideration of correspondence on record, such as fee notes and notices of taxation. The Applicant also relied on the case of Wilfred N. Konosi t/a Konosi & Co. Advocates -vs- Flamco Ltd [2017] eKLR.
12. Consequently, the Applicant argued that in the absence of a valid Advocate-Client relationship, the Bill of Costs is baseless, and the Taxing Master lacks the requisite jurisdiction to tax it, thus rendering such a taxation a nullity.
13. On its part, the Respondent admitted to receiving instructions from KTDA-MS to represent the Applicant in the tax dispute. It is the Respondent's contention that KTDA-MS served as a recognised managing agent for the Applicant, with duties that included the provision of legal services. The Respondent argued that it understood KTDA-MS to be acting as an agent for the Applicant when the instructions were issued. The Respondent asserted that the Applicant never objected to their legal representation at any stage of the proceedings, neither during the pendency of the tax appeal before the Tribunal nor after its favourable conclusion.
14. The Respondent relied on the principles of agency by conduct and estoppel. They cited the case of Heifer Project International vs Forest City Export Services Ltd & Elatt Ltd; Case No. 685 of 2010. They also relied on the cases of Pheneas Agaba -vs- Swift Freight International, and Abdulrahman Elamin -vs- Dhabi Group & 2 Others, HC Uganda at Kampala, Commercial Division HVT OO-CC-CS 432 of 2021.
15. In determining the existence of an Advocate-client relationship, I turn my mind to the definition of a client, as provided under section 2 of the *Advocates Act*. The expansive statutory definition of a client therein permits the formation of advocate-client relationships that extend beyond direct, explicit instructions. This notwithstanding, the burden of proof to establish the existence of such a relationship, particularly when disputed, lies on the Advocate. In *Omulele & Tollo Advocates -vs- Mount Holdings Ltd* [2018] eKLR, the Court of Appeal explicitly stated thus:

“As with any other agreement, the onus of proving the existence of the retainer agreement lies with he that wishes to enforce it. This is in line with the ordinary rules of contracts and evidence. (See *Kenya National Capital Corporation Limited v. Albert Mario Cordeiro & Another* [2014] eKLR and Section 107 of the *Evidence Act* Cap 80). Under the proviso to Section 45 (5) of the Act, an advocate who is a party to a retainer agreement and who has acted diligently for the client is entitled to sue and recover for the whole retainer fee should his client default in payment thereof. In fact, as long as the advocate has been diligent, his entitlement to the fixed sum is so outright that he need not tax his costs nor give statutory notice to the client prior to his pursuit of the said fee. Consequently, it behoves such advocate to ensure that the retainer agreement once made, is reduced into writing.

The same onus of proof applies to a retainer. As said earlier, where a client disowns an oral retainer or even the existence of a retainer relationship, it is for the advocate who claims under that retainer to prove to court that such a relationship indeed existed, otherwise the court will deem that he acted without instructions.”



16. This position creates a high bar for the Respondent, requiring more than a mere assertion of agency. It demands concrete proof that the Applicant's actions or inactions unequivocally created a binding relationship.
17. A fundamental principle governing the taxation of costs is that the existence of an Advocate- Client relationship serves as a jurisdictional prerequisite. Where such a relationship is genuinely disputed or is found not to exist, any decision rendered in taxation proceedings is a nullity due to a lack of jurisdiction.
18. In Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited, the Court of Appeal held that:

“The issue whether an advocate-client relationship exists in taxation of a bill of costs between an advocate and his/her client is core. The jurisdiction is conferred on the taxing officer by law. It is derived from the Advocate Act and the Advocate Remuneration Order. The taxing officer sits in taxation as a judicial officer. His or her task is to determine legal fees payable for legal services rendered.”
19. Furthermore, where the very fundamental issue of retainer is disputed, the Taxing Master is divested of the jurisdiction to proceed with taxation. In such circumstances, this issue must first be determined by the Court. The Taxing Master's duty is confined to taxing Bills of Costs where there is no dispute as to retainer, or where costs have been duly awarded by a court order. This was underscored in Simon Kitalei Kachapin & 2 others v Joel P. Arumonyang & another (Civil Application 64 of 2016) [2021] KECA 36 (KLR) and Mugambi & Co. Advocate v John Okal Ogwayo & another [2016] KEHC 8386 (KLR).
20. Given the dispute regarding the existence of the Advocate-Client relationship, which goes to the very root of the Taxing Master's jurisdiction, it is the considered view of this Court that the Bill of Costs cannot proceed to taxation at this juncture. The Respondent has not, at this preliminary stage, unequivocally discharged the burden of proof required to establish the retainer in the face of the Applicant's strong denial. Therefore, this Court finds merit in the Application.
21. In the circumstances, the Chamber Summons dated 5 September 2024 is hereby allowed. The Advocate-Client Bill of Costs dated 11 July 2023 is hereby struck out. Costs of the Application shall be borne by the Respondent.

**DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Advocate/Respondent: Ms Busima h/b Mr. Millimo

Client/Applicant: Ms Mwendwa h/b Mr. Marete

Court Assistant: Lucy Mwangi

