



Oseko & Ouma Advocates LLP v Wamenju (Miscellaneous Case E158 of 2023) [2025] KEHC 12380 (KLR) (28 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E158 OF 2023**

**FR OLEL, J
AUGUST 28, 2025**

BETWEEN

OSEKO & OUMA ADVOCATES LLP APPLICANT

AND

SIMON NDUNGU WAMENJU RESPONDENT

RULING

A. Introduction.

1. Before this court for determination are two Notice of Motion applications. The first application dated 16th December 2024, is filed by the Client/Applicant who seeks to review and/or vary the ruling of the taxing master dated 11th October 2024, assessing the Advocate-client bill of costs at Kshs 840,000/=, while the second application is the Notice of Motion Application dated 25th February 2025, filed by the Advocate seeking to convert the certificate of taxation dated 14th November 2024 into judgment of this court, plus interest due thereon at 14% PA from 29th October 2022 until payment of the said sum in full.
2. The Client/Applicant application dated 16th December 2024 is supported by the grounds stated on the face of the said application and the supporting affidavit of the applicant, who deponed that the Advocate/Respondent did represent him and four (4) other plaintiffs in; NAIROBI HCCC NO 613 OF 2010 (hereinafter referred to as the primary suit) and upon its conclusion, filed her Advocate/client bill of costs as against each of the client she represented therein. The said Advocate-Client bills were opposed and, eventually, as against him, taxed at Kshs 840,000/=. A certificate of cost was thereafter issued for the said amount.
3. The gist of the client’s application was that during the pendency of the primary suit, he had, through installments, paid the respondent/law firm legal fee totaling Kshs. 358,860/=, and supported this assertion by annexing receipts issued and cheque deposit slips. Unfortunately, they had not brought



up this fact to their advocate's attention during taxation, and thus was not raised for set-off before the taxing master.

4. He thus urged this court to review the certificate of costs, already issued, to set off sums already paid. His application had been made in good faith, and he prayed that it be allowed to avoid suffering double jeopardy. The advocate/respondent opposed this application through her grounds of opposition dated 9th June 2025, where she deponed that the said application was frivolous, mischievous, and constituted an abuse of the process of the court, given that it contravened the express provisions of Rule 11(1) & (2) of the Advocates Remuneration Order, Legal Notice 64 of 1962.
5. The second application, for determination, is the one dated 23rd February 2025, filed by the Advocate/Applicant. They sought for orders that the taxed cost amounting to Kshs 840,000/=, as confirmed by the certificate of costs dated 14th November 2024, be converted into a judgment of this court together with interest thereon at 14% P.A. from 29th October 2022, until payment of the same in full.
6. The client/respondent did oppose this Application through his replying affidavit dated 10th June 2025 and clarified that he was not challenging the taxation undertaken based on an error of law and/or wrong application of any principal of law, and therefore did not need to move court under provisions of Rule 11(1) & (2) of the *Advocates Act*. His review application was based on new evidence (earlier part settlement of legal fee as the suit progressed), which fact was not considered during taxation. It was therefore only just and proper that the same be considered and set off as appropriate, to avoid exposing him to double jeopardy.

B. Analysis & Determination

7. I have carefully considered both Applications, the affidavits made in support and in opposition thereto, and the respective submissions filed by the parties. The issues that arise for determination are;
 - i. Whether the court has the power to review the certificate of costs to set off earlier paid legal fees, and/or if the said certificate of costs should be converted into judgement of the court as sought by the Advocate/Applicant.
 - ii. Whether the Advocate/Applicant is entitled to Interest on the taxed costs.
 - iii. Who should bear the costs of the filed Applications?

i. Whether the court has the power to review the certificate of costs to set off earlier paid legal fees.

8. The Advocate/ Respondent contends that the Client/Applicant has inappropriately moved court as he did not file a reference within 14 days as provided for under Rule 11(1) & (2) of the Advocates (remuneration) Order. To that extent, the said client's application was misconceived in law and fit for dismissal.
9. The Client/Applicant, on the other hand, did contend that his application was proper in law as he was not challenging the certificate of costs per se, based on an error by the taxing master or on a principle of law. His case was based on additional evidence presented, proving that they had made part payment of legal fee, while the primary suit was ongoing, and were entitled to have the same considered and set off, to avoid duplication of payment.



10. First and foremost, taxation of Advocate/Client costs is guided by the Advocates Act and the Advocates' Remuneration Order. Section 51(2) of the Advocates Act provides that;

“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”.

11. On jurisdiction, Section 2 of the Advocates Act defines court to mean “High Court”. That means that it is only the “High Court” that has the jurisdiction to set aside or alter a certificate of costs and/or ascertain the amount taxed to be correct and convert the same into judgement.

12. As to whether this court can review the certificate of costs, in absence of a reference filed within 14 days, Justice E.C. Mwita, when faced with a similar situation in *Imara steel Mills Limited Vrs Heritage Insurance Company Ltd; Sila Nzioka & 47 others (Interested parties)*, (2019) eKLR, relied on the findings in *Moses Mwicige & 14 others Vrs Independent Electoral and boundaries Commission & 5 others* (2016) eKLR, where it was held that the rules of procedure are important in the conduct of litigation, but the same must be considered in light of provisions of Article 159(2),(d) of the constitution of Kenya 2010. He went on to hold that;

“It should however, not be that the court should pay more attention to procedure to the extent of defeating justice. If the court were to pay so much attention in the manner it has been moved to challenge what is obviously a wrong decision, it would amount to running away from the constitutional edict that justice be administered without undue regard to procedural technicalities. That would result to injustice or delayed justice for the matter”.

13. In the same case *Imara steels Mills (Supra)*, the learned judge further relied on the case of *E.Muriu Kamau & Another Vrs National Bank of Kenya ltd*, CA No 258 of 2009 (UR 180/2009), where the court observed that;

“The courts..... in interpreting the Civil procedure Act or the Appellate jurisdiction Act or exercising any power must take into consideration the overriding objectives as defined by the two Acts. Some of the principle aims of the overriding objective include the need to act justly in every situation; and the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the court by ensuring that the principles of equality of all is maintained and that as far as it is practical to place the parties on equal footing.(Emphasis)

14. The Advocate/Respondent law firm only filed grounds of opposition, raising points of law to challenge the review application, but did not expressly deny having been paid part of their legal fee as pleaded. The client's averment to that extent remains uncontroverted, and it would be pertinently unjust/unfair not to consider and deduct off legal fee already paid to the law firm before the certificate of costs is converted into judgment. See *Chase International Investment Corporation and Another v Laxman Keshra and 3 others* [1978] eKLR, and in the case of *Madhupaper International Ltd & Samuel K. Macharia vs Kenya Commercial Bank Ltd & 2 Others* HCCC No. 1263 of 1992 on unjust enrichment.

15. Under the special circumstances raised herein, the court has a duty to render justice devoid of technicalities. I am satisfied that it would be just and proper to review the taxed costs to set off the legal fee earlier paid to the Advocate herein, before the certificate of costs can be converted into judgment.



ii. Whether the Advocate/Applicant is entitled to Interest on the taxed costs.

- 16. The advocate averred that at the end of the client-advocate relationship, she prepared her final fee dated 28th September 2022, and caused the same to be served upon the client via email on 29th September 2022. She thus prayed for interest to be awarded from the said date.
- 17. Rule 7 of the Advocates (Remuneration) Order provides that;

“An advocate may charge interests at 14% 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 has been paid or tendered in full”.
- 18. My understanding of Rule 7 of the Advocates’ Remuneration Order is that interest on costs is chargeable 30 days after service of the bill of costs, which bill ought to include a claim on interest. I have perused the fee not sent to the client through email dated 29th September 2022. There is no demand for interest expressed thereon. Interest is therefore awarded from 14th November 2024, when the certificate of costs was issued.

C. Disposition

- 19. The upshot is that the client’s review application dated 16th December, 2024 has merit and the same is allowed in terms of prayer(1). The legal fee previously paid to the Advocate/Respondent, totaling Kshs 358,860/=, is deducted from the taxed amount of Kshs 840,000/=.
- 20. Consequently, the certificate of costs dated 14th November 2024 is confirmed/converted into judgment in the sum of Kshs 481,140/= plus interest at 14% P.A from 14th November 2024 until the date of payment of the said amount in full.
- 21. Each party will bear their costs for the Application dated 16th December 2024, but the Advocate/ Respondent is awarded costs of Kshs 25,000/= with respect to their Application dated 25th February 2025.
- 22. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT KIAMBU ON THIS 28TH DAY OF AUGUST, 2025.

FRANCIS RAYOLA OLEL
JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 28TH DAY OF AUGUST,2025.

In the presence of: -

.....Applicant
..... Respondent
..... Court Assistant

