



**Moses Chelanga t/a Chelanga & Associates Advocates v Jubilee Party (Miscellaneous Civil Application 425 of 2016) [2024] KEHC 559 (KLR) (Civ) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 559 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**MISCELLANEOUS CIVIL APPLICATION 425 OF 2016**  
**DAS MAJANJA, J**  
**JANUARY 31, 2024**

**BETWEEN**

**MOSES CHELANGA T/A CHELANGA & ASSOCIATES**  
**ADVOCATES ..... APPLICANT**

**AND**

**JUBILEE PARTY ..... CLIENT**

**RULING**

**Introduction and Background**

1. On 01.11.2016, the Deputy Registrar delivered a ruling in which the Advocate-Client Bill of Costs dated 03.03.2016 (“the Bill of Costs”) was allowed and taxed against the Client for Kshs. 1,671,577.00 and a Certificate of Taxation dated 21.06.2017 issued to that effect (“the Certificate of Taxation”). The Advocate now seeks judgment for the certified costs through their Notice of Motion dated 02.07.2021 made, inter alia, under section 51 (2) of the *Advocates Act* (Chapter 16 of the Laws of Kenya). The application is supported by the grounds on its face and the affidavit of Majimbo Georgiadis, an advocate in conduct of this suit on behalf of the Advocates, sworn on 02.07.2021.
2. On its part, the Client has moved the court by the Chamber Summons dated 24.09.2021 invoked, inter alia, Paragraph 11(1) of the *Advocates Remuneration Order* (“the Order”) seeking to extend time to give Notice to the Deputy Registrar of the items of objection and file a Reference/ Grounds of Objection before the Court and that the court sets aside the Certificate of Taxation. The application is supported by the affidavit of Raphael Tuju, the Client’s Secretary General sworn on 24.09.2021. This application is opposed by the Client through the replying affidavit of the Advocate, Moses Chelanga, sworn on 12.11.2021. The parties have also filed written submissions in support of their respective positions.



## Analysis and Determination

3. I propose to first deal with the Client's application for enlargement of time to file a reference before dealing with the Advocate's application for enforcement of the Certificate of Taxation, if at all.
4. Indeed, it is not in doubt that under Paragraph 11(4) of the Order, the court has the discretion to enlarge time to file a reference. This discretion is unfettered and is intended to enable the court do justice to the parties but a party who come to court must place before the court sufficient material to enable the court exercise its discretion. The Supreme Court, in County Executive of Kisumu v County Government of Kisumu & 8 others SCK Civil Application No. 3 of 2016 [2017] eKLR held that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the court (see also Nicholas Kiptoo Korir Arap Salat v Independent Electoral & Boundaries Commission & 7 others [2014] eKLR).
5. The Client avers that it was not served with the Bill of Costs or with the relevant notices during the proceedings hence it was condemned unheard. That to date, it has not been furnished with a copy of the Bill of Costs, that the Deputy Registrar failed to consider the submissions of its Counsel by the mere fact that it was not served with the Bill of Costs by the Advocates. That it was not invited to the proceedings before the Deputy Registrar and was therefore not accorded an opportunity to make its submissions before the Deputy Registrar.
6. The Client avers that should the judgment be entered against it on the Certificate of Taxation, it shall effectively be condemned unheard. It further avers that there has been no inordinate delay in filing this application since the Respondent was not a party to the suit from the onset and it is in the interest of justice that this application be allowed. It adds that its intended reference raises a prima facie arguable objection and that this is a proper case for this Court to exercise its discretion in its favour.
7. The Advocate opposes the application on the ground that it is incompetent and fatally defective as it offends the mandatory provisions of Order 9 Rule 9 of the Civil Procedure Rules. On the substance of the application, the Advocate states that sometime in 2015, he received verbal instructions from the Executive Director of the United Republican Party (URP) to represent the party in Political Parties Tribunal Dispute No. 10 of 2015; Taplelei Rotich & Others v United Republican Party. Since the matter was urgent, he accepted the instructions and acted by immediately filing a response in the matter. He updated URP from time to time. That the Executive Director of URP duly signed an affidavit which was filed thus confirming it duly appointed the Advocate to act for the party.
8. The Advocate avers that despite discharging his mandate as instructed, URP did not pay for services causing him to file the bill of costs for taxation. That he duly effected service upon URP at all times including when the matter was scheduled for a mention on 31.05.2016 and that on 31.08.2016, URP instructed the firm of Avedi & Co. Advocates who wrote to the Advocates by the letter served on them on 01.09.2016. That on 30.08.2016 the Court issued an order that the parties file their written submissions in respect of the Bill of Costs and that the Political Parties Disputes Tribunal do avail the parent file which order was duly served. That on 13.09.2016, he filed and served his submissions upon the appointed advocates and likewise URP, through its advocates, filed and served its submissions on 27.09.2016.
9. The Advocate states that by an application dated 10.04.2017 filed on 19.04.2017, he applied for URP to be substituted with Jubilee Party, the Client, pursuant to Gazette Notice Number 7317 published in the Kenya Gazette Vol CXVIII — NO.109 on 09.09.2016 which informed the public that URP was formally dissolved as it had merged with Jubilee. That application was served on Avedi & Co Advocates as the Client was indeed merged with URP therefore becoming one and the same party. On



- 09.05.2017, the court allowed the said application and certificate of taxation issued which decision was communicated to the Client by the letter dated 23.06.2018 and received by the Client on 24.06.2019. The Advocate contends that the Client cannot allege that the contents of the said letter point to an alienated party as it had been communicated to the advocate on record vide the Advocates' letter dated 12.10.2017 and duly received by them. That if the Advocate on record failed to notify the Client, the Client cannot blame him. He urges that the Client had knowledge as service was effected directly on it.
10. Based on these facts, the Advocate asserts that the Client was fully aware of this matter as it was represented on record and personally notified. That under section 11(11) of the *Political Parties Act* the records, assets, liabilities, rights and obligations of the dissolved party shall be transferred to the new political party therefore the Client cannot run away from liability for the taxed costs. That submit that the Client is guilty of laches the court's discretion.
  11. The Advocate contends that the only arguable issue the Client can raise is that of accrued interest otherwise it has not presented any sufficient grounds to warrant enlargement of time since they have had more than two years to challenge the decision of the Deputy Registrar. That the Client has ignored the provisions of the law that saw the Client substitute URP and seeks to revisit the issue of advocate — client relationship despite the fact that this and related grounds cannot be a basis for setting aside the Deputy Registrar's decision based on section 11(11) of the *Political Parties Act* and the gazette notice dissolving URP by merging it with Jubilee. Further, that the only option available to the Client based on their grounds is to apply for leave to appeal out of time against the decision to substitute URP with the Client. The Advocates insists that there existed an advocate — client relationship between themselves and URP which was merged with the Client and therefore the Client must bear the burden unless they successfully challenge the substitution and/or merger.
  12. The Client has based its application on the ground that it was not served with the Bill of Costs or the process that led to taxation. It is true that the right to be heard is sacrosanct and the court may refuse to enforce a certificate of taxation if it finds that the taxation was done in the absence of a party or that the party was never served with a taxation notice. The facts on record undermine the Client's case as it indicates that the court was made aware that the Client was formed after URP was dissolved and merged into the Client. The court allowed the substitution of URP after the merger and at all material times, URP was represented by counsel who actually responded and opposed the Bill of Costs through submissions filed on 27.09.2016.
  13. Section 11(11) of the *Political Parties Act* provides that, "The records, assets and liabilities, rights and obligations of all the dissolved political parties shall be the records, assets and liabilities, rights and obligations of the new political party including their entitlement to the Political Parties Fund under section 25 of the *Act*." Upon the merger, the Client took over the records, assets and liabilities, rights and obligations of the dissolved URP hence it cannot claim to be separate from URP. I therefore find and hold that the Client had adequate and sufficient notice of the Bill of Costs and fully participated in the proceedings by filing written submissions in opposition. The Client was therefore not condemned unheard.
  14. The Client has taken close to 5 years from the date of the Deputy Registrar's ruling and 3 years after its advocates received the Certificate of Taxation for it to file the present application. This delay is inordinate and unsatisfactorily explained in light of my findings that the Client has always been aware or ought to have been aware of this matter being the custodian of the records of the defunct URP. This disentitles them to any discretion of the court. On the other hand, the Advocate has waited for close to 7 years to realize the fruits of the Certificate of Taxation. I therefore reject the Client's application dated 24.09.2021.



15. I now turn to the Advocates' application seeking judgment against the Client for the certified amount of Kshs. 1,671,577.00. Section 51(2) of the Advocates Act provides that:

The certificate of the taxing officer by whom a 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.

16. The Certificate of Costs is conclusive as to the amount unless set aside by way of a reference under Paragraph 11 of the Order (see Otieno, Ragot & Company Advocates v Kenya Airports Authority [2021] eKLR). As I have explained the dispute on the retainer raised by the Client is illusory and since there is no reference and the court has declined to enlarge the time for filing one, it follows that there is no valid reason to stop the court from entering judgment.

### **Disposition**

17. For the reasons I have set out above, I make the following orders:

- a. The Client's Chamber Summons dated 24.09.2021 is dismissed.
- b. The Advocates' Notice of Motion dated 02.07.2021 is allowed on terms that judgment be and is hereby entered in favour of the Advocates against the Client for Kshs. 1,671,577.00 together with interest at court rates from 01.11.2016 until payment in full.
- c. The Client shall bear the costs of the both applications assessed at Kshs. 50,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**D. S. MAJANJA**

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**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

Court Assistant: Mr M. Onyango.

Mr Majimbo instructed by JGS Law LLP Advocates for the Applicant/Advocate

Mr Mwangi instructed by Njoki Mboce and Company Advocates for the Respondent.

