



**PI Samba and Company Advocates v Bundotich (Miscellaneous Civil Application
E257 of 2021) [2024] KEHC 516 (KLR) (Civ) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 516 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E257 OF 2021
DAS MAJANJA, J
JANUARY 31, 2024**

BETWEEN

PI SAMBA AND COMPANY ADVOCATES APPLICANT

AND

BUZEKI ZEDEKIAH KIPROP BUNDOTICH RESPONDENT

RULING

Introduction and Background

1. By a ruling delivered on 02.09.2021, the Deputy Registrar certified Kshs. 207,483.00 as due to the Advocates from the Client in respect of an Advocate-Client Bill of Costs dated 30.05.2021 (“the Bill of Costs”). Following the issue of the Certificate of Taxation dated 24.05.2022, the Advocates filed the Notice of Motion dated 13.06.2022 made, inter alia, under section 51(2) of the Advocates Act and Paragraph 7 of the Advocates Remuneration Order (“the Order”) seeking judgment for the certified amount together with interest at a rate of 14% p.a. from the date of service of the Bill of Costs until payment in full. The application is supported by the affidavits of Pennynah Samba, an advocate practicing in the Advocates’ firm, sworn on 13.06.2022 and 15.11.2023. It is opposed by the Client through his replying affidavit sworn on 15.11.2023. The Advocates have also supplemented their arguments by filing written submissions.
2. In opposition to the application for judgment, the Client states that sometime in 2014, the parties entered into an oral retainer under which it was agreed that the Advocates would handle both contentious and non-contentious matters on behalf of the Client, all its other associate or related companies and the companies’ directors on the understanding that the Advocates would raise a fee note of Kshs. 150,000.00 each month together with a separate invoice for transport disbursements for payment by the Client. The Client avers that since the commencement of the retainer, he has settled all the invoices raised by the Advocates. He therefore urges that the Advocates were not entitled to tax



the Bill of Costs as they had already been paid for the services rendered. The Client further avers the Client Bill of Costs was not properly defended as he had challenges instructing his counsel to defend the matter due to financial constraints and staff turnover.

3. The Client accuses the Advocates of willfully failing to disclose to the court that they raised and submitted invoices clearly marked “retainer” to the Respondent Client for payment and that their invoices for specific work like preparing the deed poll on change of name had been settled. The Client urges that allowing the judgment would amount to unjust enrichment on the part of the Advocates and would cause substantial prejudice to him.

Analysis and Determination

4. The main issue for the court’s determination is whether the court should enter judgment for the Advocates against the Client for the certified sum of Kshs. 207,483.00. 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.

5. From the above provision, a Certificate of Costs is conclusive as to the amount due unless it is set aside or altered by the court. The Court of Appeal in [Otieno, Ragot & Company Advocates v Kenya Airports Authority](#) [2021] eKLR stated a bill of costs, having already undergone the scrutiny of a taxing officer who had exercised discretion to arrive at a determination of the just fees, the issue of the quantum of the advocates’ fees was effectively disposed of at that time. As such, that decision was final and binding on the concerned parties. It was therefore not a matter that was capable of being reopened by another taxing court. The alteration or setting aside of a bill of costs has to be done through a reference brought under Paragraph 11 of the Order. The appellate court agreed with this court’s decision in [Lubulellah & Associates Advocates v NK Brothers Limited](#) [2014] eKLR where it was held that:

The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment....’

6. It is for the above reasons that this court cannot give any consideration to the grounds advanced by the Client at this point, which appear to be assailing the merits of the Bill of Costs and the Deputy Registrar’s ruling. I am in agreement with the Advocates’ deposition that such arguments ought to have been raised by way of a reference seeking to set aside the decision of the taxing officer filed under Paragraph 11 of the Order and even if the same was out of time, the Client still had the option of applying for leave to file it out of time. In the absence of such a reference and subsequent orders of the court setting aside or altering the ruling of the Deputy Registrar, there is nothing to stop the court from entering judgment.
7. In order to benefit from the higher rate of interest under Paragraph 7 of the Order, the Advocate must indicate intention to charge such interest prior to the amount being paid or tendered in full. The Advocates have not presented any notice to the Client that they intended to charge interest at the enhanced rate prior to filing the Bill of Costs. I therefore award interest from the date of the taxation until payment in full.



Disposition

8. I allow the Advocates' Notice of Motion dated 13.06.2022 with effect that judgment be entered in favour of the Advocates against the Client for Kshs. 207,483.00 together with interest at court rates from 02.09.2021 until payment in full

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2024.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

***instructed by P. I Samba and Company Advocates for the Applicant

***instructed by Kisilu, Wandati and Company Advocates for the Respondent.

