



**Gachuba t/a Mwaniki Gachuba Advocates v Gypto Security  
Company Limited (Miscellaneous Civil Application E769 of 2021)  
[2024] KEHC 4498 (KLR) (Commercial and Tax) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E769 OF 2021  
NW SIFUNA, J  
MARCH 15, 2024**

**BETWEEN**

**MWANIKI GACHUBA T/A MWANIKI GACHUBA ADVOCATES ... ADVOCATE**

**AND**

**GYPTO SECURITY COMPANY LIMITED ..... CLIENT**

**RULING**

1. This ruling is on the Applicant Advocate's Taxation Reference herein. The same was brought by way of a Chamber Summons dated 14<sup>th</sup> November 2022, and was filed under Paragraph 11 (2) of the *Advocates Remuneration Order*. The Reference has challenged and sought to set aside the taxation decision of Hon Claire Wanyama (Deputy Registrar), delivered on 30<sup>th</sup> November 2022 on the Applicant's Advocate-Client Bill of Costs dated 15<sup>th</sup> October 2021. By which taxed the said taxing officer taxed the said Bill at Ksh 506,600=.
2. The Bill arose from the Applicant having represented the Respondent in the proceedings before the Public Procurement Administrative Review Board. The proceedings related to the award of a tender where the contract value was Ksh.52,734,600=.
3. The Applicant had in the said Advocate-Client Bill of Costs, pegged the instructions fees on that value of Ksh 52,734,600=. The taxing officer in taxing the said Bill, declined to use that figure in computing the instruction fees. Her reason was that the issue before the Tribunal was not the said humongous value of the tender (i.e. Ksh 52,734,600=), but merely the setting aside of the decision that denied the Respondent that tender.



4. I also hold as did the taxing officer that the issue before the said Board, was the propriety, correctness and supportability of the Tender Award Committee's decision of rejecting the Respondent's bid and accepting the rival's bid hence awarding the tender to the latter. That to me is sound jurisprudence.
5. In procurement matters of this character, the actual issue before the Review Board is decision-making process of the Tender Committee awarding the tender as it did was proper. In other words, such a dispute is not on the quantum of the tender but on the tender award process and decision, hence the tender amount cannot be applied as the yardstick for computing instructions fees when the advocate later files his Advocate-Client Bill of costs.
6. Courts have time and again held that taxation is not a mathematical exercise. It is essentially a rational process requiring rationalization so as to compensate a party or an advocate for their effort in a litigation without the aim of enriching them or merely rewarding them.
7. In *Alex S. Masika v EPCO Builders Ltd* [2008] eKLR where the question for determination was similar to the instant one, the court in rejecting a similar argument by an Advocate observed as follows:

“The issue before the Board was the decision-making process of the committee and whether the Tender awarded was upholdable. The value of the Client's tender could not be applied to determine the fee payable to the Advocate, as it was not the value of the subject matter before the Board.
8. The next issue for determination is the issue of instructions and/or retainer. Whether the Advocate was properly instructed or retained by the Respondent to represent it in the matter before the Board. The Client in opposing the said Bill contested instructions. The issue of instructions should be straightforward one that need not evoke any controversy or dilemma for the Advocate. An Advocate will need to be out of his mind lay claim on a stranger or be mistaken as to his client.
9. This habit of clients being represented by Advocates and later disowning them and claiming that they never instructed them or that those Advocates acted for them without any or any proper instructions, is as both improper and unconscionable, and should be discouraged.
10. The Applicant having appeared before the Board and represented the Respondent without any protest from the latter, I find the instructions to be not only impliable, but present and I hold that there was an Advocate-Client relationship between this law firm and Gypto Security Co. Ltd the Respondent.
11. I hold that instructions to an Advocate need not just be explicit or reduced in writing. They can be implied or even inferred from the conduct of the parties. For instance, where the client swore an Affidavit drawn by the Advocate or wrote a letter inquiring about the progress of his case. Or from the Advocate having led the denying client (or its officer in the case of a company) at the trial.
12. From the foregoing, analysis I uphold the taxing officer's finding on the existence of the Advocate-Client relationship, and on the computation of instruction fees. The taxing officer's impugned decision is therefore hereby wholly upheld and this Reference dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MARCH 2024.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

