



**Oudia v Odera Obar & Co. Advocates (Environment & Land Case
183 of 2017) [2023] KEELC 17145 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17145 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 183 OF 2017**

**LN MBUGUA, J
APRIL 27, 2023**

BETWEEN

JAMES OUDIA PLAINTIFF

AND

ODERA OBAR & CO. ADVOCATES DEFENDANT

RULING

1. Judgement was entered for the Defendant in this matter on 27.7.2018. Subsequently, the Defendant filed a Party to Party bill of costs dated 6.1.2022, which was taxed at ksh.1, 835/= on 13.10.2022. Dissatisfied, the Defendant filed the instant Chamber Summons application dated 26.10.2022 seeking orders to set aside the aforementioned decision of the taxing officer dated 13.10.2022 and orders to remit the Party and Party Bill of costs dated 6.1.2022 to an alternative Deputy Registrar for fresh taxation. The defendant also prays for costs of the application.
2. The application is based on grounds on its face. They include inter alia that that the Taxing Officer on one hand rightly concluded that the Defendant was a law firm comprising of 2 members but arrived at an erroneous conclusion that the Defendant firm was acting in person and therefore not entitled to instruction fees.
3. The Defendant also raises ground that the Taxing Officer failed to draw a counter - distinction between; self – representing advocates who are sole practitioners and the members of law firms representing the law firm in a partnership.
4. The Defendant also argues that the Taxing Officer misapprehended the legal principles obtaining on the indemnity principle which permits an award of costs where a member represents the law firm in partnership, thereby arriving at a wrong decision.
5. The application is based on the supporting affidavit of its managing partner Migiro Maria sworn on 26.10.2022.



6. The application is opposed by the Plaintiff vide his replying affidavit sworn on 17.1.2023. He deposes that contrary to the allegations herein, the taxing officer rightfully held that the Defendant entered appearance on its own behalf, filed the documents in its own name and was represented in Court by one of the partners in the firm. He further avers that the firm is registered as a business name and therefore there is no distinction between the partners and the firm.
7. The matter was canvassed by way of written submissions which I have duly considered. This Court can only interfere with the Taxing Master's decision of 13.10.2022 if she erred in principle. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board NRB CA Civil Appeal No 220 of 2004 [2005]* eKLR the Court stated that:

“On a reference to a judge from the taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”
8. The sole issue for determination is whether a self-representing advocate is entitled to professional fees for the work done. The Defendant entered appearance on its own behalf. However, it argues that it is a partnership and there is a clear distinction between the Defendant litigant and the partner of the firm who acts as agent of the proprietorship.
9. I have also considered the persuasive authority in *Mwangi Keng'ara & Company Advocates v Invesco Assurance Company Limited [2016]* eKLR where the court stated;

“In this case, the main issue raised by the Respondent is whether the Applicant advocate was entitled to advocate's instructions fees. It then proceeded to give reasons other than the reason that I have provided that instructions fees are in any event meant to compensate a party for expenses paid to its advocate. In this case, the advocate did not instruct any external advocate to represent her or her firm in defending the application filed by the Respondent/client dated 4/4/2013 as reproduced in this ruling. Accordingly, the advocate fell in the genre of a party acting in person.”
10. I'm also guided by the authority in *Job Kipkemei Kilach v Director of Public Prosecutions & 2 others [2016]* eKLR where the Court stated,

“However, instruction fees are meant to compensate a party for expenses paid to his advocate. In this case, the commission did not instruct external lawyers: it utilized the services of its salaried employees. The documents filed by the lawyers were not drawn in the names of a professional firm but in the name of the commission. See section 39 of the *Advocates Act*. The commission thus fell in the genre of a party acting in person. The other danger is that the instruction fees may end up in the pocket of the 2nd respondent; and, raise the specter of sharing fees with an unqualified person in violation of sections 41 and 43 of the *Advocates Act*. I thus readily find that it was not entitled to the item of instruction fees of Kshs 100,000. See *Commissioner of Lands v Odinga [1972] E.A 125.*”
11. I am persuaded by the above authorities that there should be no distinction between an Advocate acting in person and any other ordinary litigant who chooses not to engage counsel. All parties should be equal before the law. In the end, I'm of the opinion that the Taxing Officer did not err in principle. Thus the application dated 26.10.2022 is not merited. The same is hereby dismissed. Each party to bear their own costs of the application.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Otieno holding brief for M/s Migiro for Defendant

Ndungu for Plaintiff

Court assistant: Vanilla

