



Bruce Odeny & Co. Advocates v Mctouch (Miscellaneous Civil Cause E003 of 2022) [2023] KEHC 19309 (KLR) (30 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19309 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL CAUSE E003 OF 2022**

MS SHARIFF, J

JUNE 30, 2023

BETWEEN

BRUCE ODENY & CO. ADVOCATES APPLICANT

AND

WILLIAM ROMAN MCTOUCH RESPONDENT

RULING

1. This ruling is in respect of the applicant's notice of motion preferred by William Roman Mc Touch seeking;
 - a. There be orders of stay of the ruling on taxation dated 31st March, 2022 certifying costs due to the applicant from the respondent at Kshs 173,517/- pending the hearing of the reference.
 - b. This reference be deemed to have been duly lodged within the time prescribed.
 - c. The refence be heard and determined expeditiously.
 - d. The taxation ruling dated 31st march, 2022 delivered in Misc. Civ. Application Number E003 of 2022 be set aside and or varied.
 - e. The bill of costs dated 9th December, 2021 in its entirety be taxed before another taxing officer or this honourable court.
 - f. The costs of the application be provided for.
2. The motion is grounded on;
 - a. The deputy registrar failed to consider material facts namely that the advocates did not give proof of services rendered in the suit.



- b. The learned deputy registrar erred in neglecting the tariff set out in the remuneration order.
 - c. The bill of costs in all circumstances were manifestly excessive and oppressive.
 - d. The learned deputy registrar failed in not using the advocates remuneration order.
 - e. It is unreasonable, unconscionable and unacceptable to allow a party charge fees when there have been no services rendered.
 - f. The deputy registrar failed and neglected to properly and correctly apply the law to the facts of the matter before her and arrived at an unjust and unfair decision.
3. The applicant, Bruce Odeny and Co. Advocates filed grounds of opposition thus;
 - a. The application is fatally defective.
 - b. The application is incompetent, unknown in law and otherwise an abuse of the court process.
 - c. The application offends paragraph 11 of the Advocates Remuneration Order.
 - d. The applicant has not advanced any sufficient grounds to impugn exercise of judicial discretion by the taxing master to warrant this court's interference.
 4. The application was disposed of by way of written submissions. Both parties filed their respective submissions. The same is on record and have been taken into account.
 5. The first determination is whether the application offends the provisions of rule 11 of the [Advocates Remuneration Order](#). The Rule provides;
 - (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 6. The applicant/respondent's contention on the issue is that the application as preferred by the respondent/applicant is unknown in law for being brought by way of a notice of motion as opposed to a chamber summons.
 7. Going back to the application, the same is expressed to be brought under rule 11(1) & (2) of the Advocates Remuneration Order as well as section 1A, 1B & 3A of the [Civil Procedure Rules](#).
 8. Going by the enabling provisions in the motion and the legal propositions on the same, I note the Rule provides the manner of approaching the court by way of chamber summons as opposed to a notice of motion.



9. It has been held that whenever there is a clear procedure provided by statute, that procedure ought to be taken. This was stated in *Speaker of National Assembly v Njenga Karume* [2008] 1 KLR 425, where it held that;

“Irrespective of the practical difficulties enumerated...these should not in our view be used as a justification for circumventing the statutory procedure...In our view, there is considerable merit in the submission that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

10. In this case, the Rule provides that the mode of approaching the court is by way of Chamber Summons.

11. In the circumstances of the matter before me, I find that the procedure adopted by the respondent/applicant is untenable in law, offends mandatory provisions of the Advocates Remuneration Order.

12. I therefore proceed to dismiss the application with costs to the applicant/respondent.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 30TH DAY OF JUNE 2023.

MWANAISHA S SHARIFF

JUDGE

In the presence of:

