



**Technoservice Limited v International Chamber of Commerce/
International Court of Arbitration (Commercial Appeal E260 of 2023)
[2025] KEHC 5774 (KLR) (Commercial and Tax) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5774 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E260 OF 2023**

PM MULWA, J

MAY 8, 2025

BETWEEN

TECHNOSERVICE LIMITED APPELLANT

AND

**INTERNATIONAL CHAMBER OF COMMERCE/INTERNATIONAL COURT
OF ARBITRATION RESPONDENT**

*(Being an Appeal against the Ruling of Hon. Gitonga, PM in
Milimani CMCC 9449 of 2019 dated the 8th September 2023)*

JUDGMENT

1. This appeal arises from the ruling of the Subordinate Court delivered on 8th September 2023, wherein the trial court awarded the Appellant costs in the sum of Kshs. 13,200/=, having taxed the Party-to-Party Bill of Costs under Schedule 7 of the Advocates Remuneration Order (ARO), 2014.

Background

2. The Appellant had filed a Party-to-Party Statement of Costs dated 16th March 2023 claiming a sum of Kshs. 4,042,376/=, comprising legal fees allegedly incurred both in Kenya and France, along with disbursements and service costs, all said to arise from the alleged contemptuous conduct of the Respondent.
3. The trial court held that the Appellant had not been awarded indemnity costs and thus could not claim them. It also found that the costs claimed related solely to interlocutory applications and not the main suit.



4. The Appellant, aggrieved by the said ruling, lodged a Memorandum of Appeal dated 5th October 2023, raising the following grounds:
 - i. That the trial Court erred in law and fact by holding and finding that the Appellant was not entitled to costs on an indemnity basis against the contemnor, the International Chamber of Commerce/International Court of Arbitration.
 - ii. That the trial Court erred in law by relying on irrelevant and distinguishable case law.
 - iii. That the trial Court erred in law and fact by finding that the Appellant was entitled to costs only under Schedule 7 of the Advocates Remuneration Order, 2014
 - iv. That the trial Court erred in law and fact that the Appellant was only entitled to costs of Kshs 13,200/=.
 - v. That the trial Court erred in law for failing to uphold the principle that costs follow event.
 - vi. That the trial Court erred in law for failing to find and hold that the Respondent had not filed a proper and valid response to the Appellant's Party to Party Statement of Cost, and its Supporting Affidavit with annexures, dated 16th March 2023 and thus that the Bill of Costs on fact of cost incurred was not defended.
 - vii. That the trial Court erred in law for failing to find and hold that the Appellant was entitled to be reimbursed the cost incurred as stated in the Appellant's Party to Party Statement of Costs, and its Supporting Affidavit with annexures, dated 16th March 2023.
 - viii. That the trial Court erred in law for failing to find and hold that the Appellant was entitled to recover the legal fees costs demonstrated to have been incurred under Schedule 5, Part I (2) of the Advocates Remuneration Order, which allows an Advocate to charge his fees at an hourly rate or rates as may be agreed between the Advocate and Client from time to time.
 - ix. That the trial Court erred in law and fact for failing to consider, find and hold that the Respondents conduct of disrespect to the laws of Kenya, disrespect to the orders of the Court, perjury and contempt caused the cost incurred and claimed in the Bill of Costs, dated 16th March 2023.
 - x. That the trial Court erred in law and fact by finding and holding that the cost caused by the gross misconduct and contempt by the Interest Party, International Chamber of Commerce, should be claimed from the Defendant.
5. It was proposed to request that the appeal herein be allowed with costs on full indemnity, the Ruling of the Trial Court dated 8th September 2023 be set aside and be substituted with an order allowing the Appellant's Party to Party Statement of Costs, dated 16th March April 2023, as drawn, and filed. In the alternative, the Court does carry out an assessment of costs awardable to the Appellant based on full indemnity.
6. The appeal was heard by way of written submissions.
7. The Respondent submitted that the trial court rightly applied Schedule 7 of the Advocates Remuneration Order, 2014, as the costs pertained to interlocutory applications. The Respondent further argued that indemnity costs are not recognized under Kenyan law and relied on authorities including Just Tip Top Collections Ltd v Modways Investments Ltd [2009] and Lydia D. Wanjiku v Joseph Ndirangu Wahero & 2 others [2016] eKLR.



8. I have considered the submissions of the parties, the pleadings, the lower court proceedings and the Ruling thereof. From the above analysis, I find the salient issues for determination can be condensed to three;
 - a. Whether the trial court erred in taxing the bill under Schedule 7 of the Advocates Remuneration Order, 2014.
 - b. Whether the trial court erred in declining to award costs on a full indemnity basis.
 - c. Whether the trial court correctly applied the principle that "costs follow the event".
9. The record reveals that the costs in question pertained specifically to three applications, and not the main suit. As correctly noted by the trial court, under Section 51 of the Advocates Remuneration Order 2014, the applicable scale in subordinate courts is Schedule 7, which governs costs for such applications.
10. Clauses 5 and 6 of Schedule 7 provide Kshs. 3,000/= for taking instructions and drawing applications; Kshs. 1,400/= for each court attendance. I am of the view that the Magistrate, therefore, correctly applied Schedule 7 and awarded KES 13,200/=, being KES 4,400/= for each of the three applications. This approach is consistent with the decision in Philip Muchiri Mugo v Mugo Kithakwa & Another [2017] eKLR, where the court held that where costs relate to applications, not the main suit, the proper scale is Schedule 7.
11. On the second issue of indemnity costs. The Appellant contended that it was entitled to indemnity costs, especially in light of the alleged misconduct by the Interested Party. However, Kenyan law does not recognize indemnity costs as a matter of course.
12. In *Just Tip Top Collections Ltd v Modways Investments Ltd* [2009] eKLR, the court made it clear that indemnity costs are not provided for under the *Civil Procedure Act* or Rules, and reliance on English common law principles to justify such awards is not permissible unless codified locally. the court held that:

“...our procedure is governed by our own *Civil Procedure Act* and Civil Procedure Rules, and they do not provide for indemnity costs... decisions interpreting the English practice rules may assist... but it is not permissible to import English rules...”
13. Similarly, in *Lydia D. Wanjiku v Joseph Ndirangu Wahero & 2 Others* [2016] eKLR, the High Court held that a successful litigant cannot recover more than what is allowed under the Remuneration Order, regardless of actual expense or counsel chosen.
14. While the Appellant cited contemptuous conduct and foreign legal costs, the award of indemnity costs must be specifically pleaded, granted in the judgment, or based on contractual or statutory entitlement, none of which were established in this case.
15. As noted in *Premchand Raichand Ltd v Quarry Services Ltd* [1972] EA 162, taxation must balance fairness and proportionality so as not to bar access to justice. The taxing officer has discretion, and unless it is shown that the discretion was exercised on wrong principles or the award was manifestly excessive or low, the appellate court should not interfere.
16. In the absence of an express order of indemnity in the substantive judgment or statute, this Court finds no basis to interfere with the trial court’s refusal to award indemnity costs.



16. On the issue of costs follow the event, the Appellant argued that the trial court failed to apply the principle that 'costs follow the event'. However, this principle applies to the ultimate outcome of a suit. The trial court did not deny the Appellant's entitlement to costs of the main suit; it simply found that the current Bill related solely to interlocutory applications, and taxed it accordingly.
17. Nothing in the ruling precludes the Appellant from filing a further Bill of Costs in respect of the main suit should circumstances permit. The principle of "costs follow the event" was not misapplied.
18. On the assertion that the court failed to consider the lack of response to the Bill, while the Respondent may not have filed a substantive response to the party-to-party bill, this does not compel the court to accept the bill as drawn, especially where it includes costs not recoverable under the applicable law. The taxing officer retains discretion.
19. I am thus satisfied that the trial court properly applied the Advocates Remuneration Order and correctly exercised its discretion in taxing the Bill of Costs.
20. For the foregoing reasons, I find no merit in the appeal. I uphold the trial court's ruling. Consequently, the appeal is hereby dismissed in its entirety with costs.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Bulent for Appellant

Mr. Kahura for Respondent

Court Assistant: Carlos

