



Bruce Odeny & Co. Advocates v Pride Kings Security Services Ltd (Miscellaneous Civil Application E003 of 2023) [2024] KEHC 5004 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5004 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E003 OF 2023**

RE ABURILI, J

MAY 15, 2024

BETWEEN

BRUCE ODENY & CO. ADVOCATES APPLICANT

AND

PRIDE KINGS SECURITY SERVICES LTD RESPONDENT

(Arising from the professional services rendered by the Applicant for the Respondent in the original Kisumu MCELR Cause No. 185 of 2019)

RULING

1. The application for determination is dated 6th February 2024 filed by the Advocate/Applicant seeking orders that the certificate of costs issued to the Applicant on 5th October 2023 be converted to a Judgment and a decree of this court and a judgment be entered for the Applicant against the Respondent for Kshs.182,352.
2. The Advocate also prays for interest at 14% p.a from 2nd August 2023 until payment in full as per Rule 7 of the [Advocate Remuneration Order](#).
3. The grounds in support of the application are, among others that the Deputy Registrar taxed the Advocate/Client Bill of Costs as per the certificate of costs dated 5th October 2023 annexed which certificate has not been challenged.
4. In the supporting affidavit of Rinya Kibiti sworn on 6th February 2024, it is deposed that the client instructed the Advocate to defend the interests of the former in Employment Claim No. 185 of 2019 Nelson Okoth Ongoma vs Pride Kings Security Services.
5. That there is no dispute as to retainer hence the certificate of costs which has not been challenged.



6. the application was opposed by the respondent who filed an application dated 30th November, 2023 seeking to set aside the taxation on account that the respondent had cleared all the legal fees due to the advocate. Submissions filed in Misc E101 of 2023 were by consent adopted as applying to this file.
7. Even before venturing into the application and submissions filed in the matter and in Misc. No. E101 of 2023 by the Respondent as adopted in this case, I observe that in taxing the Bill dated 2nd August 2023, the Deputy Registrar in her Ruling dated 5th October 2023 stated as follows:

“Ordinarily the file should have been placed before Employment and Labour Relations Court (ELRC) for taxation. But the file is here. I will proceed and tax.”
8. The Deputy Registrar of this court then proceeded to tax the bill and in doing so, there is even no evidence that she ever called for the original ELRC file wherein the services of the advocate were retained and rendered.
9. The question is, what was the basis of her taxing of the Bill. What supporting evidence was availed to her of the retainer and or services rendered.
10. In addition, what jurisdiction did she have to tax the bill respecting a matter where the claim is hinged on services rendered in an ELRC matter and yet the bill was filed before the High Court?
11. And to the applicant, what was the reason for filing the bill of costs in the High Court and not ELRC?
12. Whereas the person of Deputy Registrar or taxing master may tax a bill of costs for the ELRC where she is exercising jurisdiction of that court, she cannot tax a bill of costs respecting an ELRC matter in her exercise of special jurisdiction of the High Court.
13. Jurisdiction is everything without which, a court of law acts in vain. It is for those reasons that I find that I need not delve into the merits or demerits of the application and the opposition by the respondent/client.
14. I find that the moment the Deputy Registrar observed that the matter related to ELRC case, she should have placed the file before a judge of this court to give directions on the same. We are in 2024, the 14th year of promulgation of the 2010 Constitution and the establishment of the ELRC as a specialised court of equal status with the High Court. We are no longer in the transitional period for a party to stray and file their cases before this court respecting services rendered in a court of equal status.
15. This is a superior court of record which ought not to be a rubber stamp in matters of this nature. It is a court that must correct the errors committed or omitted.
16. I find that the Bill of Costs subject of the taxation was filed herein without jurisdiction and that the taxation by the Deputy Registrar of this court was erroneous as she was devoid of jurisdiction to do so.
17. I set aside the taxation of the Bill of Costs and vacate the Certificate of Costs dated 5th October 2023.
18. Consequently, the Bill of Costs as filed before this court devoid of jurisdiction is hereby struck out.
19. The Applicant/Advocate is at liberty to file his bill of costs for consideration by a court of competent jurisdiction.
20. Each party to bear their own costs of the proceedings herein as struck out.
21. This file is closed.
22. I so order.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 15TH DAY OF MAY, 2024

R. E. ABURILI

JUDGE

