



Bruce Odeny & Co. Advocates v Pride Kings Security Services Ltd (Miscellaneous Civil Application E113 of 2023) [2024] KEHC 5180 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E113 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 ELRC Appeal No. E015 of 2022)

RULING

1. On 23rd October 2023, the Deputy Registrar of this court taxed Advocate Client Bill of Costs dated 3rd August July 2023 at Kshs. 86,651 and issued a certificate of costs dated 23rd October 2023.
2. Vide Notice of Motion dated 30th November 2023, the Respondent Pride Kings Security Services Ltd filed an application under certificate of urgency seeking stay of execution of the order of taxation and review/setting aside the Ruling on taxation dated 23rd October 2023 and for an order that the Bill of Costs as dated 3rd August 2023 be taxed afresh.
3. The main ground in the application is that the Applicant/Advocate had withheld information from court the fact that his legal fees had already been settled by the Respondent/Client, which payment was never taken into account during taxation and that the Respondent having received new evidence which they could not find at the time of taxation, which evidence would have guided the taxing master to rule otherwise.
4. The application was supported by the affidavit sworn by Ruth Otieno Advocate on 30th November 2023 annexing cheque payments and Account statements with Equity Bank, payments made in favour of the Advocate.



5. The application is seriously opposed by the advocate denying that he received any fee payment and contending in deposition that what was paid was the monthly retainer as per each demand Notice.
6. Before I could attempt to determine the application on merit, my attention was drawn to the Ruling by Hon. G. Barasah, Deputy Registrar of this court made on 26th October 2023.
7. The learned Deputy Registrar stated as follows:

“ Ordinarily, the bill should have been filed in the ELRC but now that I will deal with....”
8. She then proceeded to tax the bill dated 3rd August, 2023.
9. At that point, again, from my perusal of the entire court file, I do not find any primary court file cited in the bill of costs, being ELRC Appeal No. E015 of 2022, *Pride Kings Security Services Ltd vs Vincent Gabriel Aton'ga*. There is no evidence that the primary suit file where the legal services or retainer given to the advocate by the client was called for and perused to confirm the items contained in the Bill of Costs.
10. Secondly, even if that court file was called to this court, the question is, under what authority would the Deputy Registrar exercising special powers of the High Court call for a court file from a court exercising jurisdiction that is totally different and distinct from the High Court, even if it was the lower court exercising specialised jurisdiction in Employment and Labour Relations matters.
11. The holding in *Karisa Chengo v Republic & others*, [2017] eKLR is clear that the High Court and the two specialised courts of equal status are different and distinct such that one cannot exercise jurisdiction of the other.
12. This court does not have jurisdiction to handle Employment and Labour Relations Court [ELRC] matters and even if the ELRC matter was in the subordinate court exercising ELRC jurisdiction, the relevant court to deal with any matter arising from such lower court is ELRC which has a Deputy Registrar.
13. An advocate who represents a client before an ELRC can only seek for taxation of his or her advocate/client bill of costs before the ELRC superior court of equal status with the High Court. This is because it is that superior Court that has the power to exercise jurisdiction of calling for the lower court file in an ELRC matter and determine the issue of whether the bill of costs as taxed is proper.
14. Article 165 (5) (b) of the *Constitution* expressly bars the High Court from hearing and determining disputes exclusively reserved for the ELC and ELRC, which are courts established under Article 162 (2) (a) and (b) of the *Constitution*. In as much as advocate client bills of costs are not necessarily disputes in land and environment, as long as they are consequent to proceedings before the ELRC, then there is no reason why such bills should be filed in the High Court thereby forcing the High Court to call for court files from the ELRC for perusal, consideration of the itemised bills and return to the ELRC. In my view, the law does not contemplate such a situation where files are allowed to fly from one jurisdiction to another jurisdiction especially.
15. That being the case, the Deputy Registrar of the High Court cannot, in that capacity, receive or call into this court an ELRC or ELC file for purposes of taxation of advocate/client bill of costs where the services of an advocate were retained and or sought in the ELRC matter. Such bills would be taxed before the Court where the services were rendered by the advocate.
16. To find otherwise will be tantamount to usurping jurisdiction of other courts and infusing them into the High Court.



17. Jurisdiction is given or vested by law or the *Constitution*. No court can arrogate itself of the jurisdiction that it does not have.
18. As earlier stated, the Deputy Registrar acknowledged the fact of the matter being an ELRC matter but went ahead to tax the bill.
19. No interests of justice can be served where there is no jurisdiction to make orders in the first instance. This fact too ought to have been known by the Applicant who is an advocate of this court.
20. Without much ado, I find the Bill of Costs dated 3rd August, 2023 was filed in this court erroneously. And even if I was wrong on this, the question is, did the taxing master call for and examine the primary court file where the retainer was given by the client? The answer is NO.
21. In addition, examining the said bill of costs, although it is alleged that it relates to services rendered in ELRC Appeal No. E015 of 2022, and appeal arising from Kisumu CMCC ELRC No. 35 OF 2020, an issue that the taxing master never queried is how at item 3, the advocate was requesting for proceedings and ruling from Tamu Law Courts and not Kisumu CM ELRC.
22. Consequently, the taxation that was done by the Deputy Registrar on 23rd October, 2023 was without jurisdiction.
23. The Bill as filed is struck out and the taxation is set aside.
24. The Applicant is at liberty to file his bill of costs before the right court with jurisdiction.
25. I make no orders as to costs.
26. This file is closed.
27. I so order.

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

R. E. ABURILI

JUDGE

