



**Isuruti v Chaudhary (Employment and Labour Relations Cause 6 of 2017) [2024] KEELRC 1052 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1052 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 6 OF 2017**

**MN NDUMA, J**

**MAY 9, 2024**

**BETWEEN**

**HILDA ANYIKA ISURUTI ..... CLAIMANT**

**AND**

**POONAM CHAUDHARY ..... RESPONDENT**

**RULING**

1. Serving before court is a reference by way of chamber summons pursuant to a notice of objection of the same date on the following grounds: -
  - i. The failure by the Taxing Officer to deal with the objection which was raised by the respondent as to the validity of the entire bill of costs for offending paragraph 62 A of the Advocate's (Remuneration) order (ARO).
  - ii. The Taxing Officer's refusal to tax the bill of cost under schedule 7 of the ARO.
  - iii. The decision of the Taxing Officer to allow items 3, 4, 5, 18, 19, 66, 67, 68 and 69 which were all related to the claimant's decision to change her advocate midstream.
2. The objection as raised in the reference and submissions dated 9<sup>th</sup> June 2023 may be summarized that paragraph 62A of ARO provides: -
  - (1) where there has been a change of advocates or more than one changes of advocates, the advocate finally on record shall draw a single bill for the whole of the matter in respect of which costs have been awarded
  - (2) On taxing the bill, the Taxing Officer shall take into account the following principles; that the bill shall not be larger than if a single advocate had been employed and that the party taxing the bill shall not obtain indemnity for costs which he has not paid.



- (3) The bill shall be accompanied by a certificate setting out the date during which all advocates acted together with all agreements for remuneration made with them, all sums paid to them for costs, and whether those sums were paid in full settlement.”
3. That there is no dispute that the bill of costs dated 8/12/2022 was not accompanied by the certificate envisaged under sub-rule 3 above hence the preliminary objection raised by the applicant herein.
  4. That the Taxing Officer failed to take into consideration the lack of certificate under sub-rule (3) and therefore made an error of principle in failing to address legal issues which if properly addressed would have affected the quantum of the bill enhanced by the Taxing Officer.
  5. That the absence of the certificate meant that the Taxing Officer was not properly guided on costs in exercise of her discretion. The Taxing Officer should have held that the bill of costs was incompetent for lack of the certificate under Rule 62A (3) of [ARO](#).
  6. That the bill should have been taxed under schedule 7 Rule 58 of [ARO](#) which provides: -
    - 58 costs in High Court may be restricted to subordinate courts’ scale – in causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded, could have been brought in a Resident Magistrate’s or other subordinate court. Costs on the Scale applicable to subordinate courts only shall be allowed unless the judge otherwise orders;”
  7. That in the instant case, the claimant was awarded Kshs. 160,000/= hence the objection to item 1 (instructions fees) for which the claimant had charged Kshs. 75,000/=. The taxation should therefore have been done under schedule 6 and not 7 and the instructions fees should have been limited to Kshs. 40,000/= and Kshs. 35,000/= taxed off.
  8. That the Taxing Officer in her ruling found that the suit was rightly filed before ELRC and by doing so ignored the meaning of Rule 58 and the fact that although the suit was filed in the year 2017, the Magistrates courts were vested with jurisdiction over employment matters in the year 2018. That the claimant filed an application to have the suit transferred to the Magistrate’s court dated 25/9/2020 but failed to prosecute the application.
  9. That the cause was heard on 14/7/2021 at ELRC and should have been heard before the Magistrates court.
  10. The applicant referred the court to a decision by Rika J. in [Joseph Mumoh Wanga v Stened TC World Class Spares Ltd](#) [2021] in which the Judge stated:
    17. Judgment value was Kshs. 48,333.30, Rule 58 of the [Advocates Remuneration Order](#) should have applied. Where the amount given at the High Court in the judgment could have been given within the jurisdiction of the Subordinate Court, the applicable scale is that which regulates party and party costs in the Subordinate Court.
    18. The claimant appears to misapprehend the submission of the respondent, bringing in an unnecessary argument about the E&LRC being a superior court and not a subordinate court. The correct position under Rule 58 of the [Advocates Remuneration Order](#), is that if a matter could have been filed at the subordinate court, taxation shall be in accordance with the schedule applicable to the subordinate court, unless the Judge otherwise orders. The position would be the same if the judgment for the amount of Kshs. 48,333.30 originated from the High Court or the Environment and Land Court. The issue is not about the E&LRC being a superior or subordinate court. An assessment of costs thrice the principal sum given on the judgment, is obviously distorted.



19. The correct schedule should have been schedule 7, which regulates taxation of party and party costs, in the subordinate courts.” ( emphasis added).
11. In conclusion, the applicant submits that the Taxing Officer should have applied schedule 7 and that failure led to the award of bloated costs at Kshs. 169,015/=.
12. The decision be set aside and the court to refer the bill of costs for consideration by a different Taxing Officer or be considered by the court itself.

### **Response:**

13. The claimant’s advocate Mr. Oscar Litoro filed a replying affidavit in opposition to the reference stating that the application is incompetent for failure to annex the Taxing Officer’s impugned decision.
14. The claimant further submitted that there was no competing party to party bill of costs filed by another advocate other than the one that was taxed and so there was no need to attach certificate under Rule 62A (3) of ARO.
15. That the Taxing Officer correctly taxed the bill under schedule 6 of ARO in that the suit was filed in the year 2017 when subordinate courts had no jurisdiction to hear and determine employment matters. That the Gazette Notice No. 6024 of 22/6/2018 had no retrospective application and it is the notice vide which the Hon. The Chief Justice empowered the subordinate courts to hear and determine employment matters.
16. That the suit was fully heard and determined by the ELRC and the Judge awarded costs to the claimant without giving directions as to what scale was applicable. That the implication is that the schedule applicable to ELRC was to be applied by the Taxing Master as he did in this matter.
17. That the bill of costs was competent. The Taxing Officer did not commit any error of principle as to invalidate the bill of costs presented by the claimant.
18. The claimant further states that the reference was incompetent as it was not filed within 14 days. That no reasons for the ruling were requested from the Taxing Officer for his decision and no reasons therefore are attached to the reference. That the same is an abuse of court process and it be dismissed with costs.

### **Determination**

19. The respondent filed a notice of objection to the decision of the Taxing Officer dated 24/10/2023 and simultaneously filed a reference of the same date.
20. The respondent did not provide evidence of any request to be provided by the Taxing Officer with the reasons for the taxation rendered by her and does not attach to the reference a ruling by the Taxing Officer on the impugned taxation.
21. In the case of James Karanja Mwangi v Villa Care Limited [2014] eKLR Justice Serگون held: -
  8. It is clear from the foregoing that the respondent ought to have written to the Taxing Officer requesting for written reasons for his decision before filing this application. No such letter has been exhibited by the respondent. I hold the same position as that held in Wanga and Company Advocates and Industrial Development Corporation (Supra). In the circumstances I find and hold that this application is premature and the court has no jurisdiction to entertain it. It is accordingly struck out.”



22. In the present matter however, the Taxing Master taxed the bill of costs and delivered reasons for the taxation in a ruling dated 11/10/2023. The respondent filed an objection to the taxation and a reference simultaneously on 24/10/2023 after receiving the ruling.
23. The Taxing Officer gave the reasons for applying schedule 6 to the bill filed by the claimant to be that the suit was filed in January 2017 before the subordinate courts were given jurisdiction to hear and determine employment matters.
24. This court finds that the Taxing Officer did not misdirect herself in this respect since the claimant could not have filed this case elsewhere other than at ELRC.
25. Furthermore, the Judge did not give directions in the judgment as to what schedule or scale was to be applied to the taxation. Costs were incurred by the claimant in a matter before this court and the Taxing Officer correctly applied schedule 6 in the circumstances of the case.
26. The court further finds that there being only one bill of costs by the only one advocate on record, there was no need to attach a certificate in terms of section 6A (3) of ARO to the bill of costs.
27. The court finds that there is no error of principle discerned from the taxation and the reasons given by the Taxing Officer for his decision.
28. The Taxing Officer applied his discretion judiciously guided by ARO and applicable principles in the circumstance of the case.
29. Accordingly, the reference has no merit and is dismissed with costs.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2024**

**MATHEWS NDERI NDUMA**

**JUDGE**

Appearance:

Mr. Amuga for respondent/applicant

Mr. Litoro for claimant

Mr. Kemboi, Court Assistant

