

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

MSC. APPLICATION NO. E 056 OF 2021

(Before Hon. Justice Ocharo Kebira)

ISAAC ONYANGO & COMPANY

ADVOCATES

.....

ADVOCATE/RESPONDENT

VERSUS

HAKIKA TRANSPORT SERVICES

LIMITEDCLIENT /

APPLICANT

RULING

Background

1 Before this Court are two applications: The Chamber summons application by the Client dated 15th January 2025, and the Advocate's Notice of Motion application dated 27th November 2024, which, by the Court's directions, shall be considered and decided simultaneously under this ruling.

2 The Client's application is by way of a reference to this Court, challenging the Taxing Master's decision on an Advocate-Client bill of costs. The Application is expressed to be under the provisions of paragraph 11[2] of the Advocates Remuneration Order. The Client seeks;

a) THAT the decision by the Deputy Registrar, Hon. Lucy Khahendi, delivered on 19th September 2024, and the reasons thereof forwarded to the Client/Applicant on 9th October 2024, be set aside and the Advocate/Respondent's bill of costs dated 21st November 2022 be taxed afresh.

b) THAT in referring the bill of costs to be taxed afresh, the Honourable Court to issue appropriate directions.

c) THAT each party to bear its own costs.

3 The application is based on the grounds outlined on its face, supported by an affidavit sworn by Ms Yusra Lahmar on 16th October 2024.

4 The Respondent did not file a replying affidavit or any of those documents known in law specifically addressing the Client's application.

5 In the Notice of Motion application, the Advocate seeks;

a) THAT this Honourable Court be pleased to enter judgment for the Advocate against the Client for the sum of KShs. 359,034.00 in terms of the ruling delivered on September 19, 2024 and the certificate of costs issued thereof with interest at 14% per annum from the date of the said ruling.

b) THAT the costs of the application be provided for.

6 The application is founded on the grounds articulated therein and the accompanying supporting affidavit sworn by the Advocate on 27th November 2024.

The Client's Application

7 The Applicant states that Advocate represented the Client in Mombasa ELRC Cause Number 124 of 2017-Hamed Khalifan Mbetto vs- Hakika Transport Services Limited. In

the matter, a decretal sum of KShs. 128,092 was awarded in favour of the Claimant.

- 8 Subsequently, there emerged a controversy on the Advocate's fees payable by the Client to the Advocate, culminating in the filing of an Advocate-Client bill of costs, which the Taxing Master eventually taxed at KShs. 359,034.00.
- 9 Aggrieved by the Taxing Master's decision on the taxation, the Client filed a notice of objection to the taxation dated 3rd October, 2024. Following the notice, the Taxing Master provided reasons for her decision on October 9, 2024.
- 10 The Client asserts that, considering the value of the subject matter in the matter where the Advocate represented the Client [KShs. 128,092], the matter was fileable in the lower court. As such, the taxation of the Advocate-Client bill of costs or any bill of costs would be taxed using the scale applicable to the subordinate court by dint of Paragraph 58 of the Advocates Remuneration

Order. This position of law was brought to the attention of the Taxing Master, but she did not consider the same.

11 Additionally, the learned Taxing Master did not, in her decision, consider the KShs. 54,800 that the Client had paid to the Advocate on an interim fee note. Had she considered this, the taxed amount would have been reduced by this sum.

The Advocate's Application

12 In support of his Notice of Motion application, the Advocate states that despite the taxation of their Advocate-Client bill of costs by the Taxing Master in their favour, in the sum of KShs. 359,034.00, and a certificate of costs issued subsequently, the Client has not settled the fees. As a result, it has become imperative that the certificate of costs be converted to a judgment of this court.

13 It is further stated that pursuant to section 27[2] of the Civil Procedure Act, as read with Rule 29 and 32 of the Employment & Labour Relations Court Rules, 2024, the

costs are payable with interest at the rate of 14% p.a from the date of the ruling.

Analysis and Determination

14 I have carefully considered the two applications by the Client and the Advocate, the supporting affidavit thereof, the learned Taxing Master's decision, and the respective submissions filed herein by the parties, and the following issues emerge for determination, thus;

a) Were the stipulations of Paragraph 58 invocable in the circumstances of the matter before the Taxing Master?

b) Which Schedule of the Advocates Remuneration Order applied to the Advocate-Client bill of costs that was before the taxing Master?

c) Did the Taxing Master fail to consider the sum of KShs. 59,092 that had been paid on an interim fee note?

15 Learned Counsel for the Client submitted that a Taxing Master, faced with a bill of costs such as Advocate-Client,

whose origin is a matter that has been heard and determined, and considering the determination, the matter ought to have been filed in the subordinate court. The law, particularly Paragraph 58 of the Advocates Remuneration Order, enjoins the master to employ the scale applicable to the subordinate courts. There can only be a departure from this rule if there is an order from the Judge that the scale applicable to the High Court be used in the matter. In the circumstances of the matter and by dint of the provision above, the learned Taxing Master ought to have applied Schedule 7 and not 6 of the Advocates' Remuneration Order.

- 16 Learned Counsel, the Advocate submitted that the Learned Taxing Master correctly applied Schedule 6 of the Advocates' Remuneration Order. Under paragraph 50 of the Order, costs in any proceedings in the High Court are taxable under Schedule 6 unless there is an order in that particular case for the application of paragraphs 22 and 58 of the Order. No order existed in the primary claim for the applicability of either paragraph 22 or 58.

- 17 He further submitted that the claim in which the Advocate rendered services, and which the Bill was drawn, was initiated by a Memorandum of Claim dated February 14, 2017. As of this date of instructions and the filing of the claim, the jurisdiction on the employment and labour relations claims solely and exclusively vested in the Employment and Labour Relations Court. The Applicable schedule, therefore, was Schedule 6, as was correctly applied by the learned Taxing Master.
- 18 He further submitted that, as held in the case of *National Bank of Kenya v Rachuonyo and Rachuonyo Advocates* [2021] eKLR, both the instruction fees and the applicable Schedule of the Advocates Remuneration Order are determinable at the time the Advocate receives the instructions. In this matter, the instructions to defend the client from the claim were received on 3rd March 2017, when only this court had exclusive jurisdiction over claims like the one that was filed against the client.
- 19 The jurisdiction of the subordinate courts over employment claims came into being much later, vide

Gazette Notice No. 6024 of 10th June 2018, published on 22nd June 2018. This was long after the primary claim had been filed and partial proceedings taken before this court. The instructions were received, the primary claim filed in court, and partial proceedings taken, when Schedule 6 of the Advocates Remuneration Order was applicable.

20 As such, the invocation of Rule 58 has no factual basis/justification. To support this point, Counsel cites the decision in **Apollo Insurance Company Ltd v Parekh [2005] eKLR.**

21 When a party wishes to challenge only part of a decision made by the Taxing Master regarding a taxation matter, the party is required to issue a clear notification specifying the particular parts or items of the decision with which they are dissatisfied. The effect of this is therefore that where a reference ensues to the Superior court over the taxation, the same can only be on the parts or items of the taxation that were put forth in the notification, and on which the Taxing Master gave reasons subsequently.

22 Undeniably, the Client issued a Notice of Objection to the taxation, dated 3rd October 2024. The notice read in part; *“Kindly furnish us, pursuant to paragraph 11[2] of the Advocates [Remuneration]Order, with reasons for taxing the following items in the said bill of costs as follows;*

I. Item 21.....KShs. 46,600.

II. Total of KShs. 359,034 without deduction of KShs. 54,800.

III. The use of Schedule 6 and Schedule 7 for items 6 to 32 on perusal.

23 Undoubtedly, the applicability of Paragraph 58 of the Advocates' Remuneration Order was not made a subject of the Notice of Objection. The reference largely fails on this ground.

24 Paragraph 58 of the Remuneration Order provides;

“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

scale applicable to the subordinate courts only shall be allowed unless the judge otherwise orders”.

25 A clear reading of this provision reveals that it considers a situation where the person initiating the suit had the option to start it in the lower courts but chose to bring it in a Superior court. The drafter of the order had a valid reason for the principle stated in the paragraph: to prevent the unjust enrichment of the initiator, as well as oppression and vexation of the other party, through high costs which would not otherwise be incurred if the matter were initiated in the subordinate court.

26 There is no dispute, and as rightly submitted by the advocate, that the primary suit was initiated and proceedings were partially undertaken therein, when this court had the sole and exclusive jurisdiction over employment and labour relations claims. The limited jurisdiction of the magistracy over employment matters came into effect after the primary suit had been filed, and instructions had been given to the advocate to defend the claim on behalf of the client. At the time, therefore, there

existed no option for the initiator of the primary suit to go to any subordinate. The only available option was this Court.

27 I am aware that, when dealing with matters filed, such as the primary suit mentioned above, Judges of this Court have exercised their discretion and ordered the payment of party and party costs at a lower scale than that outlined in Schedule 6, which applies to proceedings before them. The Court did not exercise this discretion on its own motion or at the request of any party. Advocate-client costs are inherently connected to party and party costs. Without a specific order, in the circumstances of the matter, it was not available to the learned Taxing Master to apply the provisions of paragraph 58 of the Remuneration Order as argued by Counsel for the Client.

28 Having found as I have hereinabove, and considering that the proceedings concerning the primary suit were entirely conducted before this court, I arrive at the inescapable conclusion that Schedule 6 of the Advocates' Remuneration was applicable. The Learned Taxing Master

rightly applied it to all items of the Advocate-Client Bill of costs.

29 This Court notes that the amount of KShs. 46,600 under item 21 of the Bill of costs was taxed off, not awarded. The learned Taxing Master even clarified this in her reasons issued after the Notice of objection issued by the Client.

30 In my view, the Taxing Master implicitly considered and acknowledged the payment of the KShs. 54,800 that was paid on the Advocate's interim fee note. The amount payable by the Client is KShs. 304,234.

31 On the Advocate's application, this Court holds that by reason of the foregoing, a fresh certificate of costs should issue for the amount of KShs. 304,234. The aspect of interest is declined as interest was not sought in the Bill of Costs, allowing the Client to either accept or oppose the payment, noting that an award of costs is discretionary. Upon issuance of the fresh certificate of costs, the same shall convert into a judgment of this Court.

32 In the upshot, the Client's application fails. The Advocate's application is allowed in the manner set in paragraph 31, above.

33 Each party to bear its own costs.

34 Orders accordingly.

**Read, signed, and delivered virtually in Mombasa on this
13th Day of November, 2025.**

OCHARO KEBIRA

JUDGE