



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

CAUSE NO. 452 OF 2018

**PATRICK SHIKUKU ORIYO.....
.....CLAIMANT**

-VERSUS-

**ADSITE
LIMITED.....RESPONDENT**

RULING

Introduction

1. The trial Court (Ndolo Judge) delivered judgment on 27th March 2015 whereby she awarded the Claimant Kshs. 188,500/- plus costs of the suit. Subsequently, the Claimant filed party and party Bill of Costs dated 22nd April 2025. In the meanwhile the counsel for the Respondent sought and obtained leave to cease acting on 30th June 2025 and on 4th August 2025 the Taxing officer rendered a Ruling on the Bill of Costs awarding the Claimant Kshs. 244,210.

2. On 19th August 2025, the Respondent filed Chamber Summons dated 17th August 2025 seeking the following orders:-

a) Pending the hearing and determination of the intended Reference under Rule 11 of the Advocates (Remuneration) Order, the Certificate of Taxation dated 4th August 2025 together with all consequential proceedings be stayed.

b) In the alternative to prayer (a) above, the Application herein be admitted as a reference against the taxation proceedings and the Honourable Court be pleased;-

i) To set aside the taxation proceedings, the Certificate of Taxation dated 4th August 2025 and all the consequential orders and processes arising therefrom.

ii) To order fresh taxation and grant the Respondents an opportunity to be heard on the Party - to Party Bill of Costs dated 22nd April 2025.

c) Costs of this application be in favour of the Applicants.

3. The Summons was supported by Affidavits sworn on 18th and 23rd August 2025 by the Applicant's Director Mr. Samir Shah and it was opposed by the Claimant vide a Replying Affidavits sworn on 27th August 2025 by his Advocate Mr. Philip Malanga. The Summons was disposed of by written submissions.
4. The Applicant's case was that the entire taxation process was a nullity since the Applicant was never served with the Court process after its counsel withdrew from representing it. That it only learned about the taxation on 6th August 2025 when Auctioneers served it with Proclamation Notice and Warrants of Attachment dated 5th August 2025.
5. It was further Applicants case that it filed a Notice of Objection and forwarded formally requested for the taxing officer's written reasons under Rule 11 (1) of the Advocates Remuneration Order (ARO), with a view to challenge the taxation by a Reference. It therefore prayed for Courts intervention to prevent an injustice by staying the execution and accord it an opportunity to be heard.
6. The Claimant's case, however, was that the taxation was regular as the Applicant was served with the Bill of Costs and Taxation Notice, and failed to attend Court. It was further Claimant's case that the Application is incompetent because there is no competent Notice of Objection to the taxation was filed and the Chamber Summons was filed by a stranger, as no

Notice of Appointment was filed. He produced copies of the served documents and emails and Affidavits of Service to support his case.

7. Having carefully considered the Summons, Affidavits, submissions and the Court record, the following issues fell for determination:-

- a) Whether the Chamber Summons is incompetent for being filed by a stranger.
- b) Whether there is a competent Notice of Objection to the taxation.
- c) Whether the taxation should be set aside and done afresh.

Incompetent Chamber summons.

8. The Claimant contended that the Chamber Summons was filed by an Advocate who was a stranger to the proceedings and therefore it is incompetent. The Applicant denied and averred that the new Advocate filed a Notice of Appointment after receiving instructions.

9. I have perused the Court record and indeed there is a copy of Notice of Appointment of Advocated dated 14th August 2025 filed in Court on 28th August 2025 by Alex & Amersi LLP Advocates for the Applicant . A filing fee of Kshs. 100 was paid

for the said Notice. The Notice was filed one day after the issue of lack Notice of Appointment was raised by the Claimant in his Replying Affidavit.

10. There is no dispute that the Applicant's former Advocates obtained leave to cease acting for the Applicant on 30th June 2025 and rendered the Applicant to be acting in person. Order 9 Rule 7 of the Civil Procedure Rules provides that:-

“ Where a party after having sued or defended in person appoints an advocate to act in the cause or matter on his behalf, he shall give notice of the appointment and the provisions of this order relating to a notice of change of advocate shall apply to a notice of appointment of an advocate with the necessary modification.”

11. The above rule is couched in mandatory terms and leaves no option to a party wishing to appoint an Advocate to act on his behalf in the circumstances obtaining in this suit. It follows that filing of the Chamber Summons before complying with Order 9 Rule 7 of the Civil Procedure Rules rendered the Summons fatally defective and incompetent.

Notice of Objection.

12. The Claimant contended that the Applicant never filed a notice of objection to the taxation within the time provided by

the law. The Applicant contended that it filed a Notice of Objection under paragraph 11 (1) of Advocate Remuneration Order and annexed a copy as exhibit to the Summons.

13. There is no dispute that the Applicant annexed a copy of Notice of Objection dated 17th August 2025 as exhibit **SS - 4** to the Supporting Affidavit filed on 19th August 2025. However, having perused the Court record and the Case Tracking System (CTS), I never saw any duly filed Notice of Objection and fees paid for the same. Even if the same had been filed before 19th August 2025, the same would still be incompetent because the new advocate for the Applicant had not formally come on record by filing and serving Notice of Appointment under Order 9 Rule 7.

14. In the end, I see no need of considering the merits of the Reference since it will amount to moot case in the face of the foregoing fatal omissions.

Accordingly, I strike out the Chamber Summons dated 17th August 2025 with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 17TH DAY OF DECEMBER, 2025.

**ONESMUS MAKAU
JUDGE**

Appearance:

Malanga for the Claimant

Kimani for the Respondent

ORIGINAL