

REPUBLIC OF KENYA

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

MISCELLANEOUS APPLICATION NO. E072 OF 2023

**BENARD ODERO OKELLO T/A BENARD ODERO & CO
ADVOCATES.....
ADVOCATE**

VERSUS

**KENYA COUNTY GOVERNMENT WORKERS
UNION.....CLIENT**

RULING

Background

1. The Client filed the application dated 19th March 2025 seeking the following reliefs:-
 - a) Spent.
 - b) That the court be pleased to enlarge or extend the time fixed for lodging a notice of objection and filing of a reference against the taxation order which was issued by the Taxing Officer of the court on 16th February 2024.
 - c) That upon the grant of the aforesaid request, the reference herein be deemed as properly filed.
 - d) That the taxation proceedings and consequential taxation order issued on 16th February 2024 together with the attendant Certificate of Taxation issued to the Advocate be set aside and or reviewed and or varied.

- e) That the court issues a declaration that the Taxing Officer did not have jurisdiction to tax the impugned Bill of Costs since the parties had a retainer agreement.
 - f) That an order be issued to stay execution of the impugned Certificate of Taxation.
 - g) That the court remits the Bill of Costs to a different Taxing Officer for fresh taxation.
 - h) That the court grants any other order and or directions which it deems fit and just in the circumstances.
 - i) That the court gives directions on costs of the application.
2. The application is premised on the grounds which appear on the face thereof and the supporting and supplementary affidavits sworn by one Roba Sharu Duba. The gist of the application is that:-
- a) The Taxing Officer proceeded to tax the impugned Bill of Costs without proper service on the Client.
 - b) The Taxing Officer taxed the Bill of Costs despite the parties having a retainer agreement which sets out the agreed fees for the cause which was the subject of taxation.
3. The affiant contends that the Advocate neither served the Client with the Bill of Costs nor the Notice of Taxation. He avers that the Bill of Costs and Notice of Taxation were sent to an email address which does not belong to the Client. As such, he contends that there was no service of the court processes, a matter which denied the Respondent the right to be heard.

4. The affiant further contends that since the parties had a retainer agreement which set out the fees that was payable to the Advocate, the court's jurisdiction to entertain the Bill of Costs was ousted. As such, he contends that the Taxing Officer proceeded with the taxation without jurisdiction.
5. The Advocate has opposed the application. He has filed a replying and further affidavit to anchor his objection to the motion.
6. The gist of the Advocate's objection is that:-
 - a) Both the Bill of Costs and Notice of Taxation were properly served on the Client.
 - b) The parties did not have a retainer agreement as alleged by the Client. Therefore, the Taxing Officer properly assumed jurisdiction over the taxation.

Analysis

7. The court has scrutinized the record and noted that the Advocate filed two affidavits of service to evidence service of the Bill of Costs and a Mention Notice. The affidavits are dated 26th June 2023 and 5th October 2023 respectively.
8. According to the affidavits, the Bill of Costs and Mention Notice were served on the Client electronically through email address klcgwuhq@yahoo.com. The Client has denied that this is its email address. It contends that it uses email address number klgwuhq@yahoo.com. As such, it contends that it never got the Bill of Costs and the Notice of Taxation.

9. The Client contends that the Advocate was aware of its correct email address. However, he elected to send the Bill of Costs to the wrong address with ulterior intent.
10. Apart from insisting that the Bill of Costs was served, the Advocate did not address the issue of the use of the wrong email address which the Client raised. In the court's view, it was necessary for the Advocate to have spoken to the issue in order to settle the question regarding whether there was proper service of the Bill of Costs.
11. The Advocate contended that apart from sending the Bill of Costs to the Client through email, he also sent a copy thereof to one of the Client's officers through WhatsApp. However, this mode of service was not brought to the attention of the Taxing Officer before the impugned taxation. As such, it cannot be invoked belatedly to support the disputed service.
12. In any event, the Advocate contends that he sent the WhatsApp message to one of the Client's officers' phone number and not a phone number which is registered in the Client's name. In the court's view, this cannot be said to have been proper service on the Client.
13. Further, Order 5 rule 22B of *the Civil Procedure Rules* pursuant to which the service was allegedly effected requires the process server to attach an electronic mail service delivery receipt to the affidavit of service to confirm service by electronic means (see ***BOD County Referral Hospital Kitale & another v DN (Suing through her***

next friend & Grandmother SK)
[2025] KEHC 5344 (KLR)). This document was not attached to the affidavits of service on record thereby casting doubts on the validity of the impugned service.

14. Importantly, the duty to serve both the Bill of Costs and Notice of Taxation in taxation proceedings rests on the court and not the parties. This reality is self-evident from rule 72 of *the Advocates (Remuneration) Order* which provides as follows:-

“When a bill of costs has been lodged for taxation as aforesaid the registrar shall, upon payment of the fee prescribed, issue to the party lodging the bill a notice of the date and time (being not less than five days after the issue of such notice, unless a shorter time is specially allowed by the registrar) fixed for taxation thereof and shall also issue a copy of such notice, accompanied by a copy of the bill, to each advocate and other person whose name is endorsed on the bill as entitled to receive notice of the taxation thereof:

Provided that where any person so entitled to receive notice cannot be found at his last-known address for service the taxing officer may in his discretion by order in writing dispense with service of notice upon such person.”

15. This being the case, the Taxing Officer was under duty to satisfy himself that there was proper service of both the Bill of Costs and Notice of Taxation before he proceeded to tax

the impugned Bill of Costs. The failure by the Taxing Master to satisfy himself that the court, and not the Advocate, had issued the Client with the Bill of Costs and Notice of Taxation was certainly an error of principle which resulted in the infringement of the Client's rights to be heard and to access justice (***Issa and Company Advocates v Anhui Construction Engineering Group Co. & another [2019] KEHC 3783 (KLR) & Kiriimi & another v Standard Digital & another [2023] KEHC 25070 (KLR)***).

16. The other critical matter which the Client has flagged in the dispute relates to whether the parties had a retainer agreement which disentitled the Taxing Officer to assume jurisdiction over the impugned Bill of Costs. Whilst the Client contends that the parties had a retainer agreement, the Advocate disputes this fact.
17. The court has taken note of the purported retainer agreement which the Client has tabled through its supplementary affidavit. The Client could not have tabled the document before the Taxing Officer during the impugned taxation because it did not participate in the process owing to the flawed service of the Bill of Costs and Notice of Taxation. Had the instrument been presented to the Taxing Officer, he would have inquired into the question of jurisdiction before he proceeded to tax the Bill of Costs since he has a duty to satisfy himself that he is seized of jurisdiction to tax the Bill of Costs (***Gathinji v James Aggrey Mwamu t/a Mwamu & Company Advocates***

[2025] KEHC 3456 (KLR)). In the court's view, this is a critical matter which cannot be wished away and requires interrogation through a fresh taxation process.

18. The Client contends that because of absence of service of the Bill of Costs and the Taxation Notice, it was unaware of the taxation proceedings and subsequent ruling. It contends that it only came to learn of the proceedings and ruling whilst it was going through the court's cause list for February 2025. Consequently, it avers that it could not lodge the notice of objection to the taxation and a reference within the timelines which are set by law. As such, it prays for enlargement of time to lodge the reference outside time and for the present reference to be deemed as properly filed and served.
19. Rule 11 of *the Advocates (Remuneration) Order* provides as follows:-
 - (1) *Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.*
 - (2) *The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.*

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.

20. Rule 11 (1) above requires a party who is aggrieved by a taxation ruling to lodge an objection thereto within fourteen (14) days of delivery of the ruling. Rule 11 (2) requires the party to lodge a reference against the taxation ruling within fourteen (14) days of receipt of the reasons for the decision from the Taxing Officer.
21. Whilst the two sub-rules provide for the timelines for lodging the taxation objection and reference, rule 11 (4) makes provision for enlargement of these timelines. The court is granted the discretion to enlarge time for lodging the objection and reference notwithstanding that the time for filing the two instruments (the objection and reference) has expired.

22. The circumstances which resulted in the impugned taxation could not have enabled the Client to know of the taxation proceedings. As such, it (the Client) would not have been able to file the objection to the taxation ruling and the subsequent reference within the time which the law provides. This reality renders this a deserving case for grant of the order for enlargement of time as requested in the instant application.
23. That the court has jurisdiction to grant such order is not in dispute. This is apparent from the aforesaid rule and various court decisions on the matter. For example, in ***Scion Healthcare Limited v CIC General Insurance Limited [2025] KEHC 17192 (KLR)*** the court stated that it had jurisdiction to enlarge the time to lodge a reference as long as sufficient cause for the delay in presenting it (the reference) has been shown.

Determination

24. Having regard to the foregoing, the court grants the Client leave to file the objection and reference out of time and the instant reference is deemed as having been properly filed and served.
25. The court sets aside the impugned taxation order which was delivered on 16th February 2024.
26. The court directs that the Bill of Costs dated 28th March 2023 be placed before another Taxing Officer for fresh taxation after consideration by the Taxing Officer of the question of jurisdiction to tax it (the Bill of Costs).

27. Each party to bear owns costs of the reference.

Dated, signed and delivered on the 30th day of April, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Advocate

.....for the Client

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI