



Evangelical Lutheran Church of Kenya v Omondi Abande & Company Advocates (Environment & Land Miscellaneous Case E014 of 2023) [2024] KEELC 4385 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4385 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND MISCELLANEOUS CASE E014 OF 2023**

E ASATI, J

MAY 30, 2024

BETWEEN

EVANGELICAL LUTHERAN CHURCH OF KENYA OBJECTOR

AND

OMONDI ABANDE & COMPANY ADVOCATES RESPONDENT

RULING

1. This Ruling is in respect of the reference contained in the Chamber Summons application dated 27th June, 2023 brought pursuant to the provisions of Rule 11(2) of the [Advocates \(Remuneration\) Order](#). The application seeks for orders that;
 - a. The ruling and decision dated and delivered on 3rd November, 2022 in Kisumu ELC Miscellaneous Application No.E029 of 2021 by the Taxing Officer the Learned Honourable Shimenga taxing the Respondent's Advocate/Client Bill of Costs dated 7th September, 2021 at Kshs.309,009.54 be set aside and/or vacated.
 - b. The costs of this application be provided for.
 - c. The court be pleased to make such other or further orders as may be fit and just in the circumstances.
2. The grounds upon which the application was brought are that the Applicant is dissatisfied with parts of the taxing officer's ruling dated 3rd November, 2022. That the taxing officer awarded Kshs.30,000 under item 2 of the Bill of Costs as fees for getting up and preparing for trial yet the said amount was not chargeable as the matter in respect of which the taxing officer allowed the said sum had neither been confirmed or prepared for trial. Secondly, that the Taxing Officer failed to tax off an amount of Kshs.67,400 which had been paid prior to the taxation of the Bill of Costs.



3. Further, that the taxing officer allowed an item on VAT at 16% of 41813.04, yet it had not been demonstrated that the Advocate is registered for VAT. That the Applicant objects to the charging of VAT upon the sum of Kshs.261,331.50 as that figure contained the sum of Kshs.67,400 which ought to be taxed off having been paid before taxation of the Bill of Costs and Kshs.30,000 getting up fee which is not chargeable. Lastly, that the Applicant objects to the loading of 50% upon the sum of Kshs.174,221 as the sum incorporated the Kshs.67,400 paid earlier and Kshs.30,000/- getting up fees which ought not have been charged.
4. The application was supported by the contents of the Supporting Affidavit sworn y George Otieno Ochich, Advocate and the Further Affidavit sworn on 30th November, 2023 by the same deponent and the annexures thereto.
5. The application was opposed vide the Replying Affidavit sworn by Moses Munuang'o Advocate on 23rd October, 2023. The Respondent's case is that the objection was filed 5 months 12 days after the ruling. That the reasons for the taxation were contained in the ruling of the taxing master. That the reference was filed after an unexplained inordinate delay.
6. Submissions were filed on behalf of the Objector. It was submitted that the Objector followed the right procedure of filing Reference. That it is not true that the Chamber Summons was filed five months and twelve days after the taxing officer communicated the reasons for her decision. That the objector has specified the areas of objection.
7. Although Counsel for the Respondent indicated that the Respondent had filed submissions, there are no submissions filed on behalf of the Respondent either physically or through the e-filing platform.
8. The main objection to the taxation is on 2 items namely fees for getting up for trial and on a sum of Kshs67,400 which the Objector claims to have paid prior to the taxation and which was not taken into account in the taxation. In respect of the Kshs.67,400 the Objector claimed that the Respondent issued a receipt for Kshs.17,400 but did not issue a receipt for the payment of Kshs.50,000/-. The Respondent has not denied the payments claimed to have been made prior to the taxation.
9. As regards item 2 of the Bill of costs, it is clear from the ruling of the taxing officer that that the suit in respect of which the Bill of costs arose was dismissed under Order 17 Rule 2 *Civil Procedure Rules*. It means none of the parties had taken a step to prosecute the suit for a period of one year. It was not demonstrated that there had been preparation and getting up for trial. Getting up fee is not chargeable in the circumstances.
10. I find that the reference has merit and allow it as follows:
 - i. The ruling and decision dated and delivered on 3rd November, 2022 in Kisumu ELC Miscellaneous Application No. E029 of 2021 by the Taxing Officer, Hon. Shimenga, taxing the Respondent's Advocate/Client Bill of Costs dated 7th September, 2021 at Kshs.309,009.54 is hereby set aside.
 - ii. Item No.2 (getting up fees) on the Bill of costs dated 7th September 2021 is hereby taxed off.
 - iii. The rest of the Bill of costs is hereby remitted back to the taxing officer for fresh taxation on the following directions:
 - a. The taxing officer to interrogate whether or not the sum of Kshs.67, 400/- was paid to the Respondent prior to the taxation, and if so, tax off the said amount of Kshs.67, 400/



- b. the taxing officer to determine whether VAT is payable.
- iv. No order as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 30TH DAY OF MAY 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

