



**Hashim & Lesaigor Associates Advocates v Seii (Miscellaneous Application
E130 of 2024) [2025] KEELRC 225 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 225 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E130 OF 2024
SC RUTTO, J
JANUARY 31, 2025**

BETWEEN

HASHIM & LESAIGOR ASSOCIATES ADVOCATES ADVOCATE

AND

JOSEPH KIMAIYO SEII CLIENT

RULING

1. What comes up for determination is the Notice of Motion dated 22nd July 2024 by the Advocate/Applicant, the Chamber Summons dated 31st July 2024 by the Client/Respondent and the Notice of Preliminary Objection dated 27th August 2024 by the Advocate/Applicant.
2. Vide a Ruling dated 10th July 2024, the Taxing Officer allowed the Advocate- Client Bill of Costs dated 26th February 2024 in the sum of Kshs 261,800/= and subsequently, a Certificate of Taxation was issued on 18th July 2024.
3. Consequently, the Advocate/Applicant filed a Notice of Motion dated 22nd July 2024, seeking the following orders:
 - a. Spent.
 - b. That this Honorable Court be pleased to adopt the Certificate of Taxation issued on 18th July 2024 as Orders of the Court.
 - c. That upon issuance of prayer (2) above, this Honorable Court be pleased to issue an Order of attachment attaching the Respondent's salary in execution of any ensuing decrees herein.
 - d. The costs be provided for.



4. The Application is supported by the grounds therein and the depositions contained in the Supporting Affidavit sworn on 18th September 2023, by Silas Aluku, an Advocate practicing as such in the law firm of Hashim & Lesaigor Associates Advocates.
5. Mr. Aluku deposes that it is imperative that the Certificate of Taxation issued on 18th July 2024 be adopted as an Order of this Honorable Court to enable the Advocates/Applicant to execute the same. That unless the orders are given, the Advocates/Applicant stand to suffer substantial loss of income.
6. The Client/Respondent, Joseph Kimaiyo Seii responded to the Notice of Motion through his Affidavit sworn on 29th July 2024, in which he deposes that the Taxing Master taxed assessed the instruction fee at Kshs. 250,000/=without any basis or documents in support.
7. Mr. Seii avers that he has instructed his Advocate to file a reference against the decision of the Taxing Master. That as such, the decision of the Taxing Master should not be adopted as a judgment of the Court as the same is challenged.
8. According to Mr. Seii, the Advocate did not render any opinion or write any letter and all that he did was correct the grammar in his response letter.
9. In response to the Replying Affidavit by the Client, the Advocate filed a Supplementary Affidavit sworn on 23rd August 2024 by Silas Aluku in which he deposes that the decision of the Taxing Master, although discretionary, was overly guided by the pleadings of the parties on record.
10. He further avers that in the submissions dated 28th June 2024, although opposed to the Bill of Costs as drawn, the Client admitted that the Advocates are entitled to remuneration. That as such, parties being bound by their pleadings cannot utilize a reference to invite this Honorable Court to go against the set jurisprudence that restrains courts from interfering with discretionary powers of the Taxing Master.
11. Mr. Aluku further avers that the Advocates annexed the Client's pay slip to enable the Taxing Master assess the fees, as well as email correspondences through which the Advocates were forwarding response letters to the Client's employer's disciplinary letters.
12. Mr. Aluku contends that this evidence and or documents were unrebutted at the time the Taxing Master exercised the judicial discretion to tax the Advocate's Bill of Costs.
13. It is Mr. Aluku's further deposition that the decision of the Taxing Master was made on 10th July 2024 and the 14 days contemplated in Rule 11 of the Advocate's Remuneration Order lapsed on 24th July 2024. He contends that there is no such Notice of Objection to the Taxing Officer and or reasons given by the Taxing Officer provided to this Honorable Court to warrant the purported challenge to the decision of the Taxing Officer within Rule 11.
14. Further to filing his response to the Advocate's Application, the Client further filed a Chamber Summons dated 31st July 2024, seeking the following orders:
 - a. Spent.
 - b. Spent.
 - c. The Honourable Court be pleased to vacate and set aside in its entirety the Ruling of the Hon. E. Riany Deputy Registrar dated 10.07.2024 allowing the Respondent's Bill of Costs dated 26.02.2024.
 - d. The Honourable Court do find that the taxing master erred in law and fact in taxing and allowing instruction fee at Kshs 250,000/=without any basis.



- e. The Honourable Court be pleased to refer the Advocate-client Bill of Costs dated 26.02.2024 for fresh taxation.
 - f. The Costs of the application be provided for.
15. The said Application is premised on the grounds therein and the Affidavit of Joseph Kimaiyo Seii, the Client. In the said Affidavit which was sworn on 31st July 2024, Mr. Seii deposes that the Taxing Master taxed the Advocate's Party and Party Bill of Costs at Kshs 261,800/= and assessed the instruction fees at Kshs 250,000/= without any basis at all.
16. Mr. Seii further avers that the Advocates did nothing and neither participated in the disciplinary proceedings nor write any opinion or letter. That all the Advocate did was to correct the grammar in his response letter.
17. The Advocate opposed the Client's Application by filing a Notice of Preliminary Objection dated 27th August 2024 premised on the grounds that: The court lacks jurisdiction to hear and determine the Chamber Summons dated 31st July 2024 for want of Rule 11 of the Advocates Remuneration (Amendment) Order 2014.

Submissions

18. The two Applications and the Notice of Preliminary Objection were canvassed by way of written submissions. The Court has considered the parties' respective submissions.

Analysis and Determination

19. I have considered the issues raised in the two Applications, the parties' respective responses, the Preliminary Objection by the Advocate as well as the rival submissions and the following issues stand out for determination:
- a. Whether the Client/Respondent's Application (reference) dated 31st July 2024 is competent;
 - b. Depending on (a) whether the Court should discharge, vary, review and/or set aside the Ruling delivered on 10th July 2024 by the Taxing Master;
 - c. Depending on (b), whether the Court should enter judgment against the Client/Respondent in terms of the Certificate of Taxation dated 18th July 2024.

Competence of the Application dated 31st July 2024

20. The Advocate has contended through the Notice of Preliminary Objection dated 27th August 2024 that the Court lacks jurisdiction to hear and determine the Client's Application dated 31st July 2024 for want of Rule 11 of the Advocates Remuneration (Amendment) Order 2014.
21. The Advocate has submitted that the purported challenge of the decision of the Taxing Master is misplaced and wrongly before Court as the said decision was made on 10th July 2024 and the 14 days contemplated in Rule 11 of the Advocates Remuneration Order lapsed on 24th July 2024. According to the Advocate, no Notice of Objection to the Taxing Master and or reason was given by the Taxing Officer to this Court to warrant the purported challenge.
22. On this issue, the Client has submitted that being dissatisfied with the Ruling of the Taxing Master, his Advocate requested for reasons and proceeded to file a reference on 18th July 2024 on a wrong file.



On this score, the Client posits that the reference was filed within 8 days although it did not proceed to court. Be that as it may, this position was not supported by any evidence.

23. 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.

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24. In this case, the Ruling on Taxation was delivered on 10th July 2024. There is no evidence or indication from the Client that he wrote to the Taxing Master notifying him of the items that he wished to object to. Further and as stated herein, the Client's position that he filed a reference on 18th July 2024 on a wrong file was not supported by any evidence. Indeed, it is not clear why the Client would proceed to file the reference, if at all, under a separate suit.

25. On this issue, the Court adopts the position in *Governors Balloon Safari Limited vs Skyship Company Limited and Another* [2015] eKLR and *Evans Thiga Gatimu Advocate vs Kenya Commercial Bank Limited* [2012] eKLR that if the reasons for taxation are available in the Ruling by the Taxing Officer, the reference must be filed within 14 days after the Taxation Ruling or else the reference would be incompetent if filed 14 days after the delivery of the ruling.

26. As stated herein, the Ruling which contained the reasons was delivered on 10th July 2024. There was therefore no plausible reason why the Client failed to file the reference within 14 days or better still, apply for enlargement of time under Rule 11(4) of the Remuneration Order.

27. In light of the foregoing, the Court finds the Client's Application dated 31st July 2024 to be incompetent having been filed outside the 14 days of the delivery of the Taxation Ruling.

28. To this end, the Advocate's Preliminary Objection is upheld and the Chamber Summons dated 31st July 2024 is hereby struck out with no orders as to costs.

29. That said, the 2nd issue identified for determination falls by the wayside.

30. What remains for determination is the 3rd issue which is whether the Court should enter judgment against the Client/Respondent in terms of the Certificate of Taxation dated 18th July 2024.

Judgment in terms of the Certificate of Taxation?

31. From the record, the Advocate-Client Bill of Costs was filed on 22nd April 2024 and the same was taxed at Kshs 261,800.00 in favour of the Advocate and a Certificate of Taxation issued on 18th July 2024. Notably, the Client did not move to have the Certificate of Taxation set aside or varied before the filing of the Advocate's Application dated 22nd July 2024.

32. In opposing the Advocate's Application, the Client stated that the assessment of the instruction fees by the Taxing Master was without any basis or documents in support.

33. Section 51(2) of the *Advocates Act* which is the key provision herein, is couched as follows:



- (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.
34. It is evident from the above provision that the Certificate of Taxation once issued by the Taxing Officer, is final unless set aside or altered by the Court. The Court may also make an order that judgment be entered in terms of the amount in the certificate of costs.
35. On this issue, I agree with the sentiments expressed by the Court in the case of Evans Thiga Gatimu Advocate vs Kenya Commercial Bank Limited [supra] that where an advocate's costs have been taxed and a certificate issued, the only bar to the entry of judgment is if there is a dispute as to the retainer.
36. In this case, there has been no mention of a retainer hence it is presumed that there was none. As stated herein, the Client's only contention was with respect to the manner in which the Taxing Master exercised her discretion in assessing the instruction fees at Kshs 250,000/=.
37. Therefore, as the Bill of Costs was taxed on 10th July 2024 but was not challenged in a procedural manner by the Client, the amount entered by the Taxing Master is due to the Advocate.
38. In the circumstances, the Application dated 22nd July 2024 by the Advocate is hereby allowed as follows;
- a. Judgment is hereby entered against the Client/Respondent in favour of the Advocate/Applicant for the sum of Kshs. 261,800.00 as per the Certificate of Taxation issued on 18th July 2024.
 - b. Interest at court rates from 22nd July 2024, which is the date the Application was filed, until payment in full.
39. The Notice of Preliminary Objection dated 27th August 2024 by the Advocate is upheld and the Application dated 31st July 2024 by the Client is struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Aluku for the Advocate/Applicant

Mr. Khalwale instructed for the Client/Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the



right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

