



**V Chokaa & Co Advocates v Essajee Amuee (EA) Limited (Miscellaneous Application E058 of 2024) [2025] KEELRC 588 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 588 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E058 OF 2024**

**L NDOLO, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**V CHOKAA & CO ADVOCATES ..... ADVOCATE**

**AND**

**ESSAJEE AMUEE (EA) LIMITED ..... CLIENT**

**RULING**

1. This ruling dispenses with the Client's reference brought by Chamber Summons dated 31<sup>st</sup> July 2024. The reference is based on the grounds that:
  - a. On 17<sup>th</sup> July 2024, Hon D.O Mbeja delivered a ruling in the Advocate's favour, in respect of the Advocate-Client Bill of Costs dated 27<sup>th</sup> February 2024;
  - b. The Client, being aggrieved by the manner in which the Taxing Master had taxed the Bill of Costs, filed a Notice of Objection dated 26<sup>th</sup> July 2024, seeking reasons informing the Taxing Master's decision to tax the Bill of Costs at Kshs. 72,450;
  - c. The Taxing Master condemned the Client unheard by failing and/or refusing to consider its reply to the Bill of Costs, filed in opposition, thus arriving at an erroneous conclusion that the Bill as presented was not challenged by the Client;
  - d. The Taxing Master further erred by failing to consider the evidence submitted by the Client, of the sums already paid by the Client for the work undertaken by the Advocate, both in reference to the matter that is the subject of the instant application; Nairobi MCELRCC No E1045 of 2022: *Joshua Ngila v Essajee Amijee (E.A) Ltd* and in respect of the following matters:
    - i. Nairobi MCELRCC No E1871 of 2023: *Onesmus Msafiri Mulatya v Essajee Amijee (E.A) Ltd*;



- ii. Nairobi MCELRCC No E1867 of 2023: *Ignatius Simiyu Wafula v Essajee Amijee (E.A) Ltd*;
  - iii. Nairobi MCELRCC No E1868 of 2023: *Isaac Opeto Ongata v Essajee Amijee (E.A) Ltd*;
  - iv. Nairobi MCELRCC No E1032 of 2022: *Stephen Mbithi v Essajee Amijee (E.A) Ltd*, thus arriving at the erroneous conclusion that the Advocate's instruction fees be taxed in the sum of Kshs. 45,000 each, in reference to the work undertaken by the Advocate in the prosecution of the above matters, according to the ruling issued on 17<sup>th</sup> July 2024.
- e. The Client in this regard, paid the Advocate a total sum of Kshs. 760,000 for the prosecution of the above matters and the following additional matters:
- i. Nairobi MCELRCC No E766 of 2022: *Bernard Muli Kitonga v Essajee Amijee (E.A) Ltd*;
  - ii. Nairobi MCELRCC No E1870 of 2023: *Isaac Nyaberi Nyakundi v Essajee Amijee (E.A) Ltd*;
  - iii. Nairobi MCELRCC No E1869 of 2023: *Julius Ochieng Kembe v Essajee Amijee (E.A) Ltd*;
  - iv. Nairobi MCELRCC No E1880 of 2023: *Edward Wafula Simiyu v Essajee Amijee (E.A) Ltd*;
  - v. Nairobi MCELRCC No E1881 of 2023: *Michael Musembi Mwaniki v Essajee Amijee (E.A) Ltd*;
  - vi. Nairobi MCELRCC No E1882 of 2023: *Alfayo Ndenyele Amaya v Essajee Amijee (E.A) Ltd*;
  - vii. Nairobi MCELRCC No E034 of 2024: *Stephen Kitavi Musyoki v Essajee Amijee (E.A) Ltd*.
- f. The Taxing Master thus erred in failing to appreciate, that the amount due and owing in this matter, has since been settled by the Client, and there is no pending amount due to the Advocate;
- g. The Taxing Master also erred in principle in ruling that all the other items in the Bill were drawn to scale;
- h. The Taxing Master failed to appreciate that this was an Advocate-Client Bill of Costs, and since there had been no taxation of the Party-to-Party Bill of Costs in the parent case (since this is a matter that is yet to be concluded), it thus follows that there was no justification for taxing the Advocate's Bill of Costs and then increasing it by 50%;
- i. It is trite law, as espoused in the case of *Mumias Sugar Company Limited v Professor Tom Ojienda & Associates* [2019] eKLR, that it is only when Party-to-Party costs have been taxed that the Taxing Officer may determine the related Advocate to Client costs by adding 50% to the Party-to-Party costs;
- j. The foregoing decision from the High Court is binding upon the Taxing Master, and there can be no plausible justification for the move to deviate from it;



- k. The Taxing Master thus made an erroneous conclusion in making the determination that the Advocate was entitled to 50% of the costs to be awarded.
2. The Advocate opposes the reference by a replying affidavit sworn by Dr. Vincent Chokaa, Advocate on 8<sup>th</sup> October 2024.
3. Counsel depones that there was no evidence placed before the Taxing Master to show that the Client had paid any money on account of fees for the matter on which the subject Bill of Costs was raised.
4. Counsel denies the existence of any agreement between the parties, regarding the fees to be charged, in accordance with Section 45 of the Advocates Act.
5. Counsel disagrees with the position taken by the Client that an Advocate-Client Bill of Costs cannot be taxed until the Party-to-Party costs have been determined. He asserts that an Advocate is by law allowed to file their Bill of Costs for taxation at any stage of civil proceedings.
6. Counsel concludes that there was no error committed by the Taxing Master, which can cause this Court to interfere with the taxation.
7. In his affidavit in support of the reference, the Client's Counsel, Cyprian Onyony claims to have filed a revised Bill of Costs dated 16<sup>th</sup> April 2024, in opposition to the Bill of Costs filed by the Advocate. According to Counsel Onyony the revised Bill was attached to the Client's replying affidavit dated 15<sup>th</sup> April 2024.
8. The major complaint by the Client in these proceedings is that it was condemned unheard. In his ruling dated 17<sup>th</sup> July 2024, the Taxing Master states that the Client did not challenge the impugned Bill of Costs.
9. The parties gave divergent statements regarding the Client's participation in the taxation process. On the one hand, the Advocate accuses the Client of failing to respond to the Bill of Costs as required while the Client accuses the Taxing Master of failing to consider its response on record.
10. Be that as it may, from the ruling by the Taxing Master, it is evident that the Client's input into the Bill of Costs was not taken into account. For this reason alone, and bearing in mind the overarching right to be heard, I will set aside the taxation by the Taxing Master and remit the Bill of Costs for re-taxation before another Taxing Master, other than Hon D.O Mbeja.
11. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Dr. Chokaa for the Advocate

Mr. Onyony for the Client

