



V Chokaa & Co Advocates v Essajee Amuee (EA) Limited (Miscellaneous Application E061 of 2024) [2025] KEELRC 589 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E061 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 5th December 2024, seeking orders to set aside the ruling on taxation issued by Hon D.O Mbeja on 17th July 2024. The reference is based on the grounds that:
 - a. On 17th July 2024, Hon D.O Mbeja delivered a ruling in the Advocate’s favour in respect of the Advocate-Client Bill of Costs dated 27th 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 26th 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 MCELRC No E1868 of 2023: Isaac Opeto Ongata v Essajee Amijee (E.A) Ltd and in respect of the following matters:
 - i. Nairobi MCELRC No E1871 of 2023: Onesmus Msafiri Mulatya v Essajee Amijee (E.A) Ltd;



- ii. Nairobi MCEL RCC No E1867 of 2023: Ignatius Simiyu Wafula v Essajee Amijee (E.A) Ltd;
 - iii. Nairobi MCEL RCC No E1045 of 2023: Joshua Ngila v Essajee Amijee (E.A) Ltd;
 - iv. Nairobi MCEL RCC No E1032 of 2022: Stephen Mbithi v Essajee Amijee (E.A) Ltd,
 - v. Nairobi MCEL RCC No E766 of 2022: Bernard Muli Kitonga v Essajee Amijee (E.A) Ltd;
 - vi. Nairobi MCEL RCC No E1870 of 2023: Isaac Nyaberi Nyakundi v Essajee Amijee (E.A) Ltd;
 - vii. Nairobi MCEL RCC No E1869 of 2023: Julius Ochieng Kembe v Essajee Amijee (E.A) Ltd;
 - viii. Nairobi MCEL RCC No E1880 of 2023: Edward Wafula Simiyu v Essajee Amijee (E.A) Ltd;
 - ix. Nairobi MCEL RCC No E1881 of 2023: Michael Musembi Mwaniki v Essajee Amijee (E.A) Ltd;
 - x. Nairobi MCEL RCC No E1882 of 2023: Alfayo Ndenyele Amaya v Essajee Amijee (E.A) Ltd; and
 - xi. Nairobi MCEL RCC No E034 of 2024: Stephen Kitavi Musyoki v Essajee Amijee (E.A) Ltd, thus arriving at the erroneous conclusion that the Advocate was entitled to the costs awarded in the ruling delivered on 17th July 2024.
 - i. The Client in this regard, paid the Advocate a total sum of Kshs. 760,000 for the prosecution of the above matters.
- e. 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;
- a. It is a travesty of justice for the Taxing Master to trash the Client’s evidence on payment of fees, for no reason at all;
 - b. It is unconscionable for the Advocate to request for yet another payment, despite having acknowledged receipt of money from the Client, as this will result to the unjust enrichment of the Advocate;
 - c. The onus fell upon the Advocate to either establish that no fees were paid for the work undertaken, or that the fees paid was not commensurate to the work undertaken by the Advocate in defending the Client in Nairobi MCELRC No E1868 of 2022: Isaac Opeto Ongata v Essajee Amijee E.A Limited;
 - d. It is the Client’s contention that the Advocate has failed to discharge the above burden;
 - e. It is evident from the proceedings before the Taxing Master that the Client did in fact oppose the Bill of Costs, by filing its replying affidavit in opposition to the said Bill of Costs;
 - f. It was therefore erroneous on the part of the Taxing Master to conclude that the Bill of Costs was undefended;



- g. It is the Client's contention that it was denied the sacrosanct right to be heard, in utter disregard of the Article 50 of the Constitution of Kenya;
 - h. The Taxing Master also erred in principle in ruling that all the other items in the Bill were drawn to scale;
 - i. 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%;
 - j. 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;
 - k. 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;
 - l. 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;
 - m. The above matters are yet to be fully determined and concluded; the reliefs sought in each of the claims are specific. It thus follows that the Taxing Master ought not to have pegged the value of the case on the pleadings, whereas the subject matter value would be determined on the basis of actual loss, if any, to be ascertained at the end of each case;
 - n. The proposed fees by the Client are based on preliminary prospects of fees payable at the Chief Magistrate's Court, which fees are fair and just under the circumstances;
 - o. It is in the interest of fairness and justice that the Court allows the instant application.
2. The Advocate opposes the reference by a replying affidavit sworn by Dr. Vincent Chokaa, Advocate on 11th December 2024.
- 1. 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. The major complaint by the Client in these proceedings is that it was condemned unheard. In his ruling dated 17th July 2024, the Taxing Master states that the Client did not challenge the impugned Bill of Costs.



8. 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.
9. 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.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

LINNET NDOLO

JUDGE

Appearance:

Dr. Chokaa for the Advocate

Mr. Onyony for the Client

