



Akide & Company Advocates v Kenyatta National Hospital (Miscellaneous Application E219 of 2023) [2025] KEELRC 487 (KLR) (21 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 487 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E219 OF 2023**

**AK NZEI, J
FEBRUARY 21, 2025**

BETWEEN

AKIDE & COMPANY ADVOCATES APPLICANT

AND

KENYATTA NATIONAL HOSPITAL RESPONDENT

RULING

1. The application before me is the Advocate/Applicant's Chamber Summons dated 22nd July, 2024 and expressed to be brought under Rule 11(2) of the *Advocates (Remuneration) Order*, and all other enabling provisions of the law. The Applicant seeks the following Orders:-
 - a. That the decision of the Honourable D O Mbeja ("The Deputy Registrar") delivered on 8th July, 2024 and reasons thereof uploaded on the portal on or about 10th July, 2024, be set aside, and the Applicant's Bill of Costs dated 23rd October, 2023 be taxed afresh.
 - b. That this Court be pleased to re-tax the said Advocate/Client Bill of Costs.
 - c. That in the alternative to prayer (b) above, this Court be pleased to remit the Advocate/Client Bill of Costs dated 23rd October, 2023 for re-taxation before a different taxing officer with appropriate directions or guidance thereof.
 - d. That costs of the application be provided for.
2. The application is predicated on the following grounds, stated on the face of the application and amplified in the supporting affidavit of Godfrey Munene Mberia Advocate sworn on 22nd July, 2024:-
 - a. that the Deputy Registrar misdirected himself by considering the total damages awarded in the Judgment delivered in Nairobi ELRC Cause No. 1318 [of 2013] in determining instructions fees instead of taking into account the value of the subject matter which was Kshs.10,158,550/=.



- b. that the value of the subject matter could be ascertained from the pleadings to be Kshs.10,158,550/=.
 - c. that the Deputy Registrar erred in law and principle by failing to take into account the provisions of Schedule 6 of the *Advocates Remuneration Order* 2014 in its entirety, which provides for costs of proceedings, in the High Court, considering that the primary claim (Nairobi ELRC No. 1318 of 2013 – Caleb Asiago Ariago v Kenyatta National Hospital) was initiated and determined to its conclusion in the ELRC Court. That instead, the Deputy Registrar went for Schedule 7 which provides for costs in the Subordinate Courts.
 - d. that the Deputy Registrar misdirected himself by failing to appreciate that the Respondent never opposed determination of instructions fees under Schedule 6 of the *Advocates Remuneration Order* 2014.
 - e. that even in relying on Schedule 7, the taxing officer erred in law and in principle by invoking “lower scale” fee in a matter that was defended, and still failed to increase the said amount by 50% as provided in the same Schedule at Part B.
 - f. that as a result of that wrong calculation of instruction fees, the taxing officer arrived at the wrong amount of getting up fees.
 - g. that the Deputy Registrar misdirected himself by disregarding the Applicant’s written submissions and line of authorities without offering reasons for the same.
 - h. that the Bill of Costs as taxed by the Deputy Registrar is unreasonably and unjustly inadequate, and ought to be set aside and taxed a fresh.
3. The application is opposed by the Respondent vide a replying affidavit of Fleming Lumumba sworn on 5th September, 2024. It is deponed in the said affidavit that the taxing officer correctly used Schedule 7 of the *Advocates Remuneration Order* when taxing the impugned bill of costs, and that Section 58 of the *Advocates Remuneration Order* obligates a taxing officer to use Schedule 7 where a Subordinate Court can award the value of the subject matter used to determine instruction fees.
4. It is further deponed in the said replying affidavit:-
- a. that the trial in Nairobi ELRC No. 1318 of 2013 (*Caleb Asiago Oriago v Kenyatta National Hospital*) awarded Kshs.174,726/=, and that the taxing officer correctly used the said award in the trial court as the value of the subject matter when computing instruction fees.
 - b. that the basis for determining the subject matter’s value for assessing instruction fees depends on the taxation stage: before Judgment, the pleadings determine the value of the subject matter. After Judgement, the Court award/Judgment determines the value of the subject matter.
 - c. that the taxing master taxed the impugned bill of costs as presented and did not require to redraw it for the Applicant. That the Applicant never included the 50% adjustment under Part B in the filed bill of costs to enable the taxing master to rule on it.
 - d. that the taxing master correctly taxed the bill of costs, and that the application should be dismissed with costs.
5. The twin issues for determination in this matter is whether the Taxing Officer erred in law in taxing the Advocate/Client Bill of Costs dated 23rd October, 2023 under Schedule 7 of the *Advocates Remuneration Order* (2014) and in failing to increase the taxed instructions fees by 50% under Part B of the said Schedule.



6. It is a common ground that the proceedings herein stem from Nairobi ELRC Cause No. 1318 of 2013 (*Caleb Asiago Ariago v Kenyatta National Hospital*) wherein the Applicant Advocate rendered legal services to the Respondent/Client. It is not disputed that the said proceedings were defended, and that upon trial, the Court awarded Kshs.174,726/=. I have gathered from the Applicant's supporting affidavit that the pleaded value of the subject matter in the aforementioned suit (claim) was Kshs.10,158,550/=. The Respondent has not denied this fact; and has not put forward a different figure as having been the pleaded value of the subject matter. None of the parties herein bothered to place before this Court copies of pleadings filed in the said suit and the Judgment delivered by the Court.
7. By dint of Article 162(2)(a) of the *Constitution* of Kenya 2010, this Court is a specialised Superior Court of equal status with the High Court. In the absence of a separate law regulating taxation of costs arising from proceedings in this Court, the Advocates Remuneration Order, as amended from time to time, has over the years been applied in taxing such costs.
8. The law applicable in taxing costs arising from proceedings in the High Court and from this Court is Schedule 6 of the *Advocates Remuneration Order* (2014). As already stated in this Ruling, the suit from which these proceedings stemmed was defended. Schedule 6 of the *Advocates Remuneration Order* (2014) ought to have been applied in taxing the Advocate/Applicant's bill of costs herein.
9. Part A Clause 1(b) of the said Schedule provides as follows:-

“To sue in any proceedings described in paragraph (a) where a defense or other denial of liability is filed; or to have an issue determined arising out of inter-pleader or other proceedings before or after suit; or to present or oppose an appeal where the value of the subject matter can be determined from the pleadings, Judgement or settlement between the parties:

Where the value exceeds (-) but does not exceed Kshs.500,000/= Kshs.75,000/
=.....”
10. In my view, in employment matters where Claimants make claims in figures based on what they believe they are entitled to, and much of which the Courts disallow upon trial, calculation of fees for taking instruction should always be based on the sum awarded in the Court's Judgment, or as agreed in settlement by parties; to avoid injustices to employers.
11. In the present case, the Taxing Officer taxed the Advocate/Applicant's Bill of Costs dated 23rd October, 2023 under Schedule 7 of the *Advocates Remuneration Order* (2014), which applies to taxation of costs arising from proceedings in the Subordinate Courts, and in doing so relied on Rule 58 of the *Advocates Remuneration Order*. Rule 58 of the *Advocates Remuneration Order* provides as follows:-

“In causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded, could have been brought in a Resident Magistrate's Court or other subordinate court, costs on the scale application to Subordinate Courts only shall be allowed unless the Judge otherwise orders.”
12. By dint of Article 162(2)(a) of the *Constitution* of Kenya 2010, this Court has exclusive Jurisdiction over matters employment and labour relations. However, vide Kenya Gazette Notice No. 6024 of 22nd June, 2018, some of this Jurisdiction was delegated to Magistrates of the rank of Senior Resident Magistrate and above, to handle employment matters where the employee's gross monthly salary does not exceed Kshs.80,000/=.



13. When applying Rule 58 of the Advocates Remuneration Order, therefore, a taxing officer is obligated to peruse the pleadings filed in the suit from which the taxation proceedings arose, with a view to determining whether the suit ought to have been filed in the Subordinate Court. In the present case, the Taxing Officer is not shown to have interacted with and/or perused the pleadings filed in Nairobi ELRC Case No. 1318 of 2013 before coming to a conclusion that the same ought to have been filed in the Subordinate Court. He therefore fell into error in making such a conclusion, and doing so without stating the basis for the same. Further, the Taxing Officer fell into error by failing to increase the taxed fees for taking instructions by 50% pursuant to Schedule 7 Part-B, which schedule he had opted to use, as the taxation related to an Advocate's fees. Schedule 6 has a similar provision regarding taxation of an Advocate's instructions fees. The 50% increase is a matter of law, and a Taxing Officer ought to take cognizance of the law even where the Advocate/Client Bill of Costs does not contain such an item. I must quickly add that due diligence demands that Advocates draft their pleadings, including bill of costs, meticulously at all times, taking into account provisions of the applicable law.
14. Calculation of getting up fees is informed by the amount taxed for taking instructions and as increased by 50% as aforesaid; and pursuant to Clause 2 of the applicable Schedule.
15. In view of all the foregoing, and having considered written submissions filed on behalf of both parties herein, I find merit in the Advocate/Applicant's Chamber Summons application dated 22nd July, 2024; and the same is hereby allowed in the following terms:-
 - a. The Ruling/decision of the Taxing Officer (D O Mbeja – Deputy Registrar) dated 8th July, 2024, and any reasons subsequently given by the said Taxing Officer thereon, are hereby set aside.
 - b. The Advocate/Client Bill of Costs dated 23rd October, 2023 is hereby remitted back for taxation, and shall be taxed by a Taxing Officer other than the Honourable D O Mbeja, Deputy Registrar; and shall be taxed pursuant to Schedule 6 of the *Advocates Remuneration Order* (2014).
 - c. Each party shall bear its own costs of the application.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY, 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Sarah for the Applicant

Mr. Oange for the Respondent

