



V. Chokaa & Co. Advocates v Roy Hauliers Limited (Miscellaneous Application E237 of 2024) [2025] KEELRC 504 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 504 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E237 OF 2024**

S RADIDO, J

FEBRUARY 20, 2025

**IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA
AND
IN THE MATTER OF THE TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT
AND
IN THE MATTER OF NAIROBI MAGISTRATES ELRC NO E1718 OF 2019**

BETWEEN

V. CHOKAA & CO. ADVOCATES APPLICANT

AND

ROY HAULIERS LIMITED RESPONDENT

RULING

1. V. Chokaa & Co. Advocates (the advocate) caused its Advocate–Client Bill of Costs to be taxed on 30 September 2024.
2. On 16 October 2024, Roy Hauliers Ltd (the Respondent) filed a Chamber Summons under a Certificate of Urgency seeking orders:
 - i. ...
 - ii. That pending the hearing and determination of this application inter-partes, this Honourable Court be pleased to grant an order of stay of execution of the Ruling delivered on 30th September 2024, the resultant Certificate of Costs and all other consequential orders issued against the applicant.
 - iii. That pending the hearing and determination of this Application, this Honourable Court be pleased to grant an order of stay of execution of the Ruling delivered on 30th September



2024, the resultant Certificate of Costs and all other consequential orders issued against the applicant.

- iv. That this Honourable Court be pleased to set aside the Taxing Officer's Ruling delivered on 30th September 2024 and the Bill of Costs dated 8th August 2024 be taxed afresh.
 - v. That upon the grant of order number (4) above, this Honourable Court do order that the Client/Applicant's Notice of Motion application dated 20th September 2024 be heard and determined by this Honourable Court.
 - vi. That this Honourable Court be pleased to grant any other orders and reliefs it deems just and expedient in the circumstances.
 - vii. That costs of this application be provided for.
3. The Certificate of Urgency in respect of the Summons was dated 15 October 2024, while the Summons itself was dated 8 October 2024.
 4. The advocate filed a replying affidavit opposing the Summons on 12 November 2024.
 5. The Court gave directions on the Summons on 13 November 2024. The Respondent was granted an interim stay of execution on condition the decretal sum is deposited into the Court before 22 November 2024.
 6. The Deputy Registrar raised an invoice on 19 November 2024. The Respondent has not paid the deposit to the Court as directed.
 7. The next day, the advocate moved the Court through a Motion dated 17 October 2024 and amended on 29 October 2024, seeking orders:
 - i. That judgment be entered for the applicant as against the Respondent in the sum of Kshs 86,235/- in accordance with the Certificate of Taxation of costs filed with the Plaintiff.
 - ii. That the Respondent to pay the applicant the said sum together with interest thereon at 14% per annum with effect from 8th August 2024 until payment in full.
 8. The Court gave directions on the Motion on 6 November 2024, and the Respondent filed a replying affidavit on 12 January 2025 opposing the Motion.
 9. When the parties appeared in Court on 14 January 2025, the Court directed them to file and exchange submissions on the two applications.
 10. The advocate filed his submissions on 20 January 2025, and the Respondent on 7 February 2025.
 11. The Court has considered the Summons, Motion, and submissions will examine the applications in terms of the filing date.

The Summons

12. The grounds which were advanced by the Respondent in seeking the setting aside of the Taxation were, in brief, that the Taxing Officer taxed the advocate's Bill of Costs without giving directions on the Respondent's Motion dated 20 September 2024; there was a final fee note between the parties which had been settled; the advocate failed to attend before the Taxing Officer on 23 September 2024 due to unavoidable technical challenges and was not aware of the date set for Ruling on the Bill of Costs; that a Ruling notice on the Bill of Costs was served on 27 September 2024; the Respondent filed an application seeking the arrest of the Ruling on 25 September 2024; despite the pendency of 2



applications on record, the Taxing Officer went ahead to deliver the Ruling on the Bill of Costs; the Taxing Officer had exhibited bias against the Respondent; the Taxing Officer had erred in principle and denied the Respondent an opportunity to be heard.

13. The advocate filed a replying affidavit opposing the Summons. He deponed therein that the Respondent had filed a Motion in response to the Bill of Costs seeking a stay of the taxation and striking out of the Bill for want of jurisdiction; there was no agreement on fees as contemplated by section 45 of the *Advocates Act* as alleged by the Respondent; the Respondent despite being aware of the date set for taxation failed to file submissions or attend before the Taxing Officer; that the application to arrest the Ruling filed on 27 September 2024 had not been paid for and the Taxing Officer informed the parties as much; that pursuant to Rule 76 of the *Advocates (Remuneration) Order*, a Bill of Costs could be taxed in the absence of the parties; the Respondent was not denied an opportunity to be heard and that the Respondent had not shown error of principle on the part of the Taxing Officer.
14. The record indicates that the Respondent raised the question of the two pending Motions before the Taxing Officer on 30 September 2024, and the Taxing Officer retreated to examine the CTS platform to confirm.
15. The Taxing Officer made a brief Ruling after checking the CTS system. In the Ruling, the Taxing Officer found that the Respondent had not paid the requisite filing fees for the application dated 25 September 2024 seeking a stay of the Taxation.
16. This Court has reviewed the CTS and the notes in the physical file.
17. The Respondent filed a Motion dated 20 September 2024 seeking an order staying the taxation set for 23 September 2024.
18. The Respondent did not attend the taxation, and the Taxing Officer scheduled a Ruling on the Bill of Costs for 30 September 2024.
19. In effect, the Motion dated 20 September 2024 was overtaken by events for failure to prosecute.
20. The Respondent must have understood the implications of the failure to attend before the Taxing Officer to prosecute the Motion because on 25 September 2024, it filed another Motion dated 25 September 2024 seeking to arrest the Ruling set for 30 September 2024 and a stay of the taxation or any further proceedings in respect to the Bill of Costs.
21. The Respondent brought the Motion to the attention of the Taxing Officer.
22. The Taxing Officer retreated to confirm whether the Motion had been validly filed. The Taxing Officer noted that the Respondent had not paid for the Motion by 1145 hours when the parties were before her. The Taxing Officer, therefore, went ahead to deliver her Ruling on the Bill of Costs.
23. The Taxing Officer cannot be blamed for declining to consider an application which had not been paid since a filing is only complete and available for consideration by a Court upon payment of the filing fees.
24. The Respondent also alleged that the Taxing Officer failed to consider its Motion dated 20 September 2024. The Motion sought a stay of taxation and striking out the Bill for want of jurisdiction.
25. The Respondent filed the Motion only after being served with a hearing date for taxation. It asserted that it had an agreement on payment of fees with the advocate. Such an agreement was not annexed to the Motion nor placed before the Taxing Officer or this Court at all.



- 26. If indeed the assertion by the Respondent on the agreement on fees was valid, it would have simply filed an affidavit placing the agreement before the Taxing Officer. The Respondent snubbed the opportunity.
- 27. The Court, therefore, finds that there is no basis for setting aside the Certificate of Taxation on the ground that there was an agreement on fees and that the fees had been settled.
- 28. The Respondent explained its failure to attend taxation on 23 September 2024 due to technological challenges. It has not given any particulars of such technological failures.
- 29. The Respondent further accused the Taxing Officer of bias. It did not place before the Court any evidence of bias.
- 30. The Summons is for dismissal.

The Motion

- 31. The advocate's Bill of Costs was taxed on 30 September 2024.
- 32. The Respondent opposed the adoption of the Certificate of Costs on the grounds that it was premature and improper because there was a dispute on retainer and that there was in place an agreement on payment of fees of Kshs 60,000/- that had been paid in full settlement (the Respondent drew the attention of the Court to section 45 of the *Advocates Act*).
- 33. The Respondent further contended that the plea for 14% interest was not founded on any statute or contractual agreement and was thus arbitrary (the arguments on interest have no basis in light of section 27(2) of the *Civil Procedure Act*).
- 34. The Respondent produced before the Court a document referenced V. Chokaa & Co. Advocates Roy Hauliers Maters Amount (Kshs) Fee Note
.....
.....
- 35. The document listed several legal proceedings the advocate had handled on behalf of the Respondent, and it lists the steps taken by the advocate up to the time of the preparation of the document and the next steps, such as mention for compliance and taking of hearing dates.
- 36. Section 45 of the *Advocates* recognises that an advocate and a client can agree on costs before or after the fact.
- 37. The section is in the following terms:
 - 45. Agreements with respect to remuneration
 - (1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—
 - (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate’s remuneration in respect thereof;
 - (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing the amount of the advocate’s instruction fee in respect thereof or his fees for appearing in court or both;



- (c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof; and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorised in that behalf.
38. The agreement relied on the Respondent to assert that there was an agreement on the legal fees is a document from the advocate and signed by one Khadijah 'Uthman on behalf of Chokaa & Co. Advocates.
39. The document does not have the signature of the Respondent or its authorised agent.
40. For purposes of the *Advocates Act*, the Respondent did not have an enforceable agreement on legal fees and the Court so finds.

Orders

41. Flowing from the above, the Court orders:
- i. The Summons dated 8 October 2024 is without merit and is dismissed with costs.
 - ii. The Amended Motion dated 29 October 2024 is allowed on terms:
 - (a) That judgment is entered for the advocate against the Respondent in the sum of Kshs 86,235/-.
 - (b) The Respondent to pay interest on the costs at 14% from the date of taxation.
42. The advocate to have costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Advocate V. Chokaa & Co. Advocates

For Respondent Waruiru Karuku & Mwangale Advocates

Court Assistant Wangu

