



Oracle Technology Systems (Kenya) Limited v Aluodo (Miscellaneous Application E222 of 2024) [2025] KEELRC 409 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 409 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E222 OF 2024**

SC RUTTO, J

FEBRUARY 14, 2025

BETWEEN

ORACLE TECHNOLOGY SYSTEMS (KENYA) LIMITED APPLICANT

AND

MOSES OMONDI ALUODO RESPONDENT

RULING

1. This Ruling arises from a taxation by Hon. D.O Mbeja. In his decision dated 8th July 2024, the Taxing Officer taxed the Party and Party Bill of Costs as drawn in the total sum of Kshs 7,101,135/=.
2. Aggrieved by the said decision, the Applicant lodged the instant Reference vide a Chamber Summons Application dated 12th August 2024 seeking the following orders:
 - a. The Honourable Court be pleased to set aside the costs awarded by the Deputy Registrar Honourable D.O. Mbeja on taxation of the Party and Party Bill of Costs dated 15th December 2022 filed in Employment and Labour Relations Case No. 227 of 2019: Moses Omondi Aluodo v. Oracle Technology Systems (Kenya) Limited vide the Ruling dated 8th July 2024 in its entirety.
 - b. This Honourable Court be pleased to re-assess the costs due to the Respondent in respect of items 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 15, 17, 19, 20, 21, 22, 23, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 48, 49, 50 and 51 of the Party and Party Bill of Costs dated 15th December 2022 and make a finding on the same.
 - c. In the alternative and without prejudice to the foregoing, this Honourable Court be pleased to remit the Party and Party Bill of Costs dated 15th December 2022 for review and reconsideration by the Taxing Master in respect of items 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 15, 17, 19, 20, 21, 22, 23, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 48, 49, 50 and 51.



- d. The costs of this application be provided for.
3. The Application is founded on the grounds set out on its face and the Supporting Affidavit sworn on 12th August 2024, by Dennis Mukuu, the Applicant's Regional Human Resources Manager-East Africa. Mr. Mukuu deposes that prior to the taxation of the Bill of Costs in question, Hon. Lady Justice Monica Mbaru had delivered a Ruling on 17th November 2022 granting stay of execution of the Judgment on the condition that the sum of Kshs.3,784,648.67 (the Decretal Sum) be paid to the Respondent, which condition was fully satisfied by the Applicant.
 4. That in view of the stay orders, the Applicant filed a Notice of Preliminary Objection dated 9th January 2024 challenging the taxation of the Bill. The Taxing Officer delivered his Ruling on 8th March 2024 dismissing the said objection and directing that the Bill proceeds for taxation.
 5. Mr. Mukuu further avers that the Applicant opposed the Bill and submitted that the Respondent was only entitled to costs of Kshs 278,643/= guided by the provisions of Scheme VI of the Advocates (Remuneration) (Amendment) Order of 2014.
 6. On 8th July 2024, the Taxing Officer delivered his Ruling wherein he taxed the Bill as drawn. The Applicant received a copy of the Ruling on 7th August 2024.
 7. Mr. Mukuu avers that he is advised by Mrs. Cosima Wetende, Advocate on record for the Applicant, which advise he verily believes to be true that the Taxing Officer significantly erred in law, fact and principle in the taxation of the Bill.
 8. In response to the Chamber Summons, the Respondent filed a Replying Affidavit sworn on 18th November 2024. It is the Respondent's deposition that in his Statement of Claim, he had claimed a commission of Kshs 39,008,703/= which the Court allowed and ought to be paid by the Applicant.
 9. He further avers that the Applicant has conveniently failed to disclose in the Application that the judgment directed that he be paid his commission which stands at Kshs 39,008,703/= which amount was used by the Taxing Officer to tax the Party and Party Bill of Costs. In the Respondent's view, this indicates that the Applicant has approached this Honourable court with unclean hands and does not deserve any equitable relief.
 10. It is the Respondent's further deposition that the Taxing Officer considered the judgment sum of Kshs 3,784,648.67/= together with his commission of Kshs 39,008,703/= in considering the Party and Party Bill and also applied the provisions of Schedule IV of the Advocates (Remuneration) (Amendment) Order, 2014 and was therefore satisfied that the Bill was drawn to scale.
 11. The Respondent further avers that the Taxing Officer has given reasons in the Ruling how the final figure was arrived at.
 12. The Respondent further contends that the prayers in the Application are untenable since they relate to the Party and Party Bill of Costs dated 15th December 2022 which does not exist since the same is dated 14th December 2022 and Amended on 19th April 2024.
 13. In the Respondent's view, the Application is frivolous, vexatious and an abuse of the Court process. He urged the Court to dismiss the same with costs.

Submissions

14. The Application was canvassed by way of written submissions. Both parties complied and I have considered their respective submissions.



Analysis and Determination

15. As I can discern from the Application before me, the Response thereto as well as the rival submissions, the twin issues arising for determination by this Court are;
 - a. Whether the Reference is competent; and
 - b. Whether the Taxing Officer erred in law and principle while taxing the Party and Party Bill of Costs herein and thereby reached a wrong assessment.

Competence of the Reference

16. The first issue raised by the Respondent under this head is with respect to the form of the Reference. In this regard, the Respondent has contended that the Application as filed contains orders that are untenable and incapable of being enforced as the Application indicates that the Bill of Costs is dated 15th December 2022 yet the Bill is dated 14th December 2022 and amended on 19th April 2024. As such, the Respondent has submitted that the Application relates to a Bill of Costs that does not exist.
17. Arguing against the position taken by the Respondent, the Applicant has submitted that in its grounds in the Application and in the Supporting Affidavit of Dennis Mukuu, the Bill of Costs dated 15th December 2024 (sic) was subsequently amended by the Respondent on 19th April 2024.
18. The Applicant has further submitted without prejudice that any error with respect to the dates of the Bill of Costs is technical and does not defeat the substratum of the Reference.
19. Notably, the orders sought in the Application refer to a Bill of Costs dated 15th December 2022. Nonetheless, the thread running through the grounds in support of the Application and the Supporting Affidavit of Dennis Mukuu is that the Bill of Costs which is the subject of this Reference, is the one dated 15th December 2022 and subsequently amended on 19th April 2024. As such, there is no doubt that the Bill of Costs in question is the one that was amended on 19th April 2024 and specifically, the one that is in respect of the Taxation Ruling dated 8th July 2024.
20. The Court further agrees with the Applicant that an error in the dates on the Bill of Costs is not so fatal and does not go to the substance of the Reference. Indeed, dismissal of a suit or an application for that fact, on such a ground is not only unjust but is contrary to Article 159(2) (d) of *the Constitution* which requires this Court to administer justice without undue regard to technicalities.
21. The second issue raised by the Respondent under this head relates to the timelines for filing the Reference. According to the Respondent, the Reference has been filed outside the timelines prescribed under paragraph 11(1) of the Advocates Remuneration Order.
22. On this issue, the Applicant has averred that it received the Taxation Ruling on 7th August 2024. According to the Applicant, it wrote to the Taxing Officer on 8th July 2024, the very same day the Ruling was delivered seeking to be availed a copy of the Ruling.
23. That on 10th July 2024, it wrote to the Taxing Officer once again and explained in detail the specific items it opposed. That as of 22nd July 2024, it had not been provided with a copy of the Ruling hence it wrote to the Taxing Officer highlighting the Taxing Officer's obligation under paragraph 11(2) of the Advocates Remuneration Order. That on 7th August 2024, the Applicant wrote another letter to the Taxing Officer seeking to be availed a copy of the Ruling/and or reasons. That it was only on this date that the decision was vailed.



24. Rule 11 of the Advocates Remuneration Order sets out the procedure to be followed by an aggrieved party in challenging taxation or assessment of costs. It 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.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
25. In the instant case, the Ruling on Taxation was delivered on 8th July 2024. However, it is apparent that a copy of the decision was not availed to the parties immediately thereafter. In this regard, the record bears that through its letters dated 10th July 2024, the Applicant indicated the items it was objecting to and requested for the reasons of the Taxing Officer's decision to allow take them appropriate action. Seemingly, this letter did not elicit any response hence through a further letter dated 22nd July 2024, the Applicant once again requested for the reasons of the Taxing Officer's decision.
26. It was not until 7th August 2024 that a copy of the Taxation Ruling was availed to the Applicant.
27. My understanding of Rule 11(2) of the Advocates Remuneration Order is that it is only after receipt of reasons that an objector may within fourteen (14) days file the application raising his objections before a judge. Such was the determination in the case of Paul Gicheru T/A Gicheru & Co. Advocates vs Kargua (K) Construction Co. Ltd Eldoret HCMCA No. 124 of 2007.
28. As stated herein, the Ruling despite being delivered on 8th July 2024, was only made available to the parties on 7th August 2024. As to whether the same contained reasons is another issue which is at the heart of the dispute herein.
29. Therefore, the Applicant herein having received the Taxation Ruling on 7th August 2024 and consequently filed the instant Application on 13th August 2024, cannot be said to have filed the Reference outside the timelines prescribed under Rule 11(2) of the Advocates Remuneration Order.
30. In light of the foregoing, the Court finds and holds that the Reference herein is competent.

Whether the Taxing Officer erred in law and principle while taxing the Party and Party Bill of Costs herein and thereby reached a wrong assessment

31. In the case herein, the Taxing Officer awarded the Bill of Costs as filed in the sum of Kshs 7,101,135.00. In this regard, the Taxing Officer awarded instruction fees at Kshs 5,500,000.00.



32. From the record, the Court awarded the Respondent compensation at Kshs 2,838,486.50 and notice pay at Kshs 946,162.17 hence totaling Kshs 3,784,648.67.
33. Further to that, the Court directed the Applicant to analyze due commissions and to encash the leave days earned and pay the Respondent accordingly upon clearance. There is no evidence on record to ascertain whether these computations were ever done. Therefore, in the absence of the said computations, it is not possible to determine the total decretal amount awarded by the Court.
34. It is trite that instruction fees are charged from the value of the subject matter. In the case of *Joreth Ltd v Kigano & Associates* [2002] 1 E.A. 92, the Court addressed the issue as follows:

“We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a Bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case), but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.” Underlined for emphasis
35. In a nutshell, the subject matter may be ascertained from the pleadings, judgment or settlement.
36. In the instant case, as the matter was determined by way of Judgment, the instruction fees ought to have been ascertained from the decretal amount awarded by the Court. However, as stated herein, the same is not apparent from the court record as the computations with respect to unpaid commissions and unpaid leave are yet to be done.
37. As was held in the case of *First American Bank of Kenya Ltd v Gulab P Shah & Others* [2002] the Court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.
38. The learned Judge further held that “it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates Remuneration Order itself, some of the relevant factors to take into account include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge.”
39. In the instant case, the Taxing Officer did not identify the value of the subject matter in the Taxation Ruling when he proceeded to assess instruction fees at Kshs 5,500,000.00.
40. Indeed, it is notable that the Taxing Officer did not state the reasons for allowing the Bill of Costs as drawn. What’s more, he did not set out the basic instruction fees. That was an error of principle.
41. As a matter of fact, the Taxing Officer did not state whether he was basing the instruction fees on the amount claimed in the Statement of Claim or the amount awarded in the Judgment. This aspect was left for speculation.
42. Looking at the Taxation Ruling, it is not possible to ascertain what weighed on the mind of the Taxing Officer as he assessed the Bill of Costs and allowed it as drawn. Differently expressed, it cannot be ascertained whether the Taxing Officer took into account relevant factors in assessing the Bill of Costs.
43. For the foregoing reasons, the Chamber Summons dated 12th August 2024 is allowed as follows:



- a. The taxation of the Bill of Costs amended on 19th April 2024 is set aside and remitted for taxation by a different Taxing Officer.
- b. There will be no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Wetende for the Applicant

Mr. Museve for the Respondent

Kemboi 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

