



V. Chokaa & Co. Advocates v Essajee Amijee (E.A) Limited (Miscellaneous Cause E062 of 2024) [2025] KEELRC 989 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 989 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CAUSE E062 OF 2024**

**AK NZEI, J
MARCH 28, 2025**

BETWEEN

V. CHOKAA & CO. ADVOCATES APPLICANT

AND

ESSAJEE AMIJEE (E.A) LIMITED RESPONDENT

RULING

1. On 30th August, 2024, this Court's Deputy Registrar, sitting as a Taxing Officer, taxed the Applicant/Respondent's (the Advocate's) Advocate/Client Bill of Costs dated 27th February, 2024 in the sum of Kshs.84,042/=, and a Certificate of Costs subsequently issued on 4th September, 2024.
2. On 12th September, 2024, the Respondent/Applicant (the Client) filed a Chamber Summons application dated 11th September, 2024 seeking Orders:-
 - a. That this Court be pleased to stay the Ruling of the Hon. Fredrick Nyamora delivered on 30th August, 2024, taxing the Applicant's Bill of Costs dated 27th February, 2024 at Kshs.84,042/=, pending hearing and determination of the application.
 - b. That this Court be pleased to vacate and/or review the Ruling of the Hon. Fredrick Nyamora in its entirety, and all consequential orders emanating from the said Ruling.
 - c. That this Court be pleased to assess and tax a fresh the Applicant's Bill of Costs dated 27th February, 2024.
 - d. That the stay orders issued herein, and all the other orders cited on the face of this application, do apply to the following series of taxation matters which are also subject to the Ruling delivered by Hon. Fredrick Nyamora on 30th August, 2024:-
 - i. Nairobi ELRC Misc. Cause No. E063 of 2024 (V. Chokaa & Co. Advocates – vs – Essajee Amijee (E.A) Limited).



- ii. Nairobi ELRC Misc. Cause No. E064 of 2024 (V. Chokaa & Co. Advocates – vs – Essajee Amijee (E.A) Limited).
 - iii. Nairobi ELRC Misc. Cause No. E066 of 2024 (V. Chokaa & Co. Advocates – vs – Essajee Amijee (E.A) Limited).
 - iv. Nairobi ELRC Misc. Cause No. E067 of 2024 (V. Chokaa & Co. Advocates – vs – Essajee Amijee (E.A) Limited).
 - v. Nairobi ELRC Misc. Cause No. E068 of 2024 (V. Chokaa & Co. Advocates – vs – Essajee Amijee (E.A) Limited).
 - vi. Nairobi ELRC Misc. Cause No. E070 of 2024 (V. Chokaa & Co. Advocates – vs – Essajee Amijee (E.A) Limited).
- e. That costs of the application be provided for.
- f. That this Court be pleased to make such orders as it may deem just and appropriate in the circumstances.
3. The application sets out on its face the grounds upon which it is anchored, and is based on the annexed supporting affidavit of Cyprian Onyony Advocate sworn on 11th September, 2024. It is deponed in the said affidavit that the Taxing Officer committed various errors in principle, and failed to fully appreciate the legal and factual issues before him, hence arriving at an erroneous conclusion with respect to the sums awarded as costs. That the Taxing Officer erred by failing to consider the sum of Kshs.760,000/= already paid up by the Client for the work undertaken by the Advocate.
4. It is further deponed in the said supporting affidavit that aggrieved by the manner in which the Taxing Officer had taxed the bill, the Respondent/Applicant (the Client) filed a Notice of Objection dated 3rd September, 2024, seeking the reasons informing the Taxing Officer’s decision to tax the Advocates Bill of Costs at Kshs.84,042/=.
5. The Court’s record herein shows that the application was placed before the Court under a certificate of urgency on 12th September, 2024 and that the Court (Dr. Jacob Gakeri, J) directed that the application be served and response thereto be filed and served within specified timelines, and that directions on disposal of the application be subsequently taken.
6. The application is opposed by the Applicant/Respondent (the Advocate) vide a replying affidavit of Vincent Chokaa Advocate sworn on 8th October, 2024. It is deponed in the said replying affidavit that the Advocate is yet to obtain Judgment against the Client, and that no execution proceedings have been taken out.
7. It is further deponed in the said replying affidavit:-
- a. that there was no evidence presented to the effect that any money had been paid to the Advocate by the Client on account of fees regarding which the bill in issue was taxed, and that the Taxing officer was right in holding that there was no nexus between any money paid to the Advocate’s Firm and the bill under taxation in the matter.
 - b. that the Client’s claim that there existed an agreement between the Client and the Advocate on fees to be charged under Section 45 of the Advocates Act is not true as no such agreement was placed before the taxing officer.



- c. that filing of an Advocate/Client bill of costs is not tied to filing and taxation of a party and party bill of costs, as an Advocate is by law allowed to file his bill of costs for taxation at any stage of proceedings.
8. The Client (Applicant) filed a further affidavit sworn by Athman Wambua, the Respondent's Human Resource Manager, on 24th October, 2024. It is deponed in the said further affidavit that the Advocate did not give an account of the money received by him from the Client, and that the onus fell on him 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.
9. Written submissions were filed by both parties, for and against the application, pursuant to the Court's directions in that regard.
10. I have noted from documents filed herein by both parties that the impugned Advocate/Client taxation proceedings stemmed from undisputed legal services rendered by the Advocate to the Client in Milimani Chief Magistrates Court ELR Case No. 1869 of 2023 (Julius Ochieng Kumbo – vs – Essejee Amijee (E.A) Limited), which the Advocate defended on behalf of the Client/Applicant. I have also noted that reliefs sought in the said suit included (prayers) for a declaratory order and a liquidated/particularised claim for a sum of Kshs.220,000/=, among other prayers/reliefs. For taking of instructions (item No. 1 in the Advocate/Client Bill of Costs dated 27th February, 2024 and filed herein), the Advocate had asked for Kshs.65,000/=. The Taxing Officer taxed this item at Kshs.45,000/=, on the lower scale as, according to the Taxing Officer, the subject suit was still pending. None of the parties has challenged this exercise of discretion by the Taxing Officer, and I will not interfere with the same.
11. It is worthy noting that the subject Advocate/Client Bill of Costs (dated 27th February, 2024) had only four (4) items. The foregoing item (No. 1) on taking of instructions and the following three (3) others:-
- i. Service of Response to claim on 23/11/2023 ... Kshs.1,400/=.
 - ii. Attending Court for mention on 22/1/2024 Kshs.1,400/=.
 - iii. Disbursements (Court fees) paid on 23/11/2023 ... Kshs.500/=.
- Which the Taxing Officer allowed as drawn. None of the parties has raised an issue on this.
12. Under Schedule 7 Part – B of the Advocates Remuneration Order, the sum prescribed in Part – A of the Schedule for taking instructions is to be increased by a half in determining an Advocate's fees for taking instructions. This does not happen regarding disbursements and court attendances.
13. A half of Kshs.45,000/= is Kshs.22,500/=, and Kshs.45,000/= increased by a half is Kshs.67,500/=. Add the undisputed Kshs.3,300/= made up of one attendance and disbursements, and the total is Kshs.70,800/=. The Advocate's filed Advocate/Client Bill of Costs dated 27th February, 2024 did not contain an item on V.A.T. Parties are always bound by their pleadings.
14. Although the Client alleged that some fees were paid to the Advocate, nothing was placed before either the Taxing Officer or this Court to demonstrate that any money paid to the Advocate by the Client related to the subject suit (Milimani CMCC No. E1869 of 2023). I have noted from documents filed herein that the Client had other Court matters. It was incumbent on the Client to demonstrate that legal fees had, indeed, been paid regarding the subject suit. He who alleges must always tender proof.
15. Regarding the six (6) matters listed in paragraph 2(d) of this Ruling, it is to be noted that the Miscellaneous Cause herein is not shown to have been consolidated with any of the said matters.



Taxation of Advocate/Client Bill(s) of Costs filed in each of those matters was done separately. Each of the said matters has its own life and destiny, and no orders regarding the said matters can be given in this matter. Indeed, the Taxing Officer's Ruling delivered on 30th August, 2024 does not even mention the said six (6) matters. I have noted that physical court files on those matters have been tied up together with the Court file herein, and that the matters have been listed as coming up for Ruling today. This is amazing. The said files shall be detached from the file herein, and shall be taken back to the Registry for parties to take appropriate action on the matters, each matter separately.

16. Having said that, and having considered written submissions filed on behalf of parties herein, the Client/Applicant's Chamber Summons application dated 11th September, 2024 is allowed in the following terms:-
- a. The Taxing Officer's Taxation Ruling delivered on 30th August, 2024, taxing the Advocate's bill of costs at Kshs.84,042/= and the Certificate of Taxation issued thereon on 4th September, 2024, are hereby set aside.
 - b. The Advocate/Client Bill of Costs dated 27th February, 2024 is hereby re-assessed and taxed at Kshs. 70,800/=.
 - c. A Certificate of Costs shall issue forthwith.
 - d. Each party shall bear its own costs of the application.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 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 Khadija for the Applicant/Respondent

Miss Ochieng for the Respondent/Applicant.

