



**Achola Jaoko & Company Advocates v Wayiera (Miscellaneous Application
33 of 2020) [2025] KEELRC 1177 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1177 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 33 OF 2020**

L NDOLO, J

APRIL 24, 2025

BETWEEN

ACHOLA JAOKO & COMPANY ADVOCATES APPLICANT

AND

DAVID OTIENO WAYIERA RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 21st November 2024, by which the Applicant asks the Court to enter judgment in the sum of Kshs. 716,226.42 together with interest at 14% per annum, from 5th April 2021, being the effective date after notice issued pursuant to Rule 7 of the Advocates (Remuneration) Order.
2. The Applicant also asks for costs of the Motion.
3. The application is supported by an affidavit sworn by Caleb Odhiambo Jaoko, Advocate and is premised on the following grounds:
 - a. That a Certificate of Taxation for Kshs. 716,226.42 was issued on 12th November 2024, and it has not been disputed, set aside or altered;
 - b. That the retainer of the Advocate's services has not been disputed;
 - c. That by a statutory notice dated 5th March 2021, the Applicant notified the Respondent of interest at 14% per annum pursuant to Rule 7 of the Advocates (Remuneration) Order;
 - d. That the ends of justice shall be served only upon this application being granted.
4. The Respondent opposes the application by his replying affidavit sworn on 5th December 2024.
5. The Respondent depones that he is on the whole, dissatisfied with the taxation of the Bill of Costs as the Taxing Officer erred in principle, by determining the subject matter of the suit from the pleadings



while judgment had already been delivered on 31st July 2024, and the amount shown to the Taxing Officer.

6. The Respondent maintains that it is only where the value of the subject matter is neither discernible nor determinable from the pleadings, judgment or settlement, that the Taxing Officer is permitted to use his discretion to assess instruction fees in accordance with what he considers just.
7. The Respondent avers that he objected to the Bill of Costs vide a letter dated 4th November 2024. He adds that in the absence of a response and unavailability of the ruling, he wrote a follow up letter on 12th November 2024, upon which the ruling was posted in the Case Tracking System (CTS) and he was able to access it.
8. The Respondent states that he did not receive a response to his objection and he therefore wrote a follow up letter dated 26th November 2024. He asserts that he has not received a response from the Taxing Officer, as mandatorily guided by Rule 11 of the Advocates (Remuneration) Order.
9. The Respondent complains that the Taxing Officer has frustrated his efforts to contest the Bill of Costs.
10. Caleb Odiambo Jaoko, Advocate swore a supplementary affidavit on 14th February 2025, accusing the Respondent of failing to file a reference, pursuant to Rule 11 of the Advocates (Remuneration) Order.
11. According to the Applicant, the Taxing Officer's decision made on 30th October 2024 was reasonable and within the provisions of the Advocates (Remuneration) Order.
12. The Applicant accuses the Respondent and his Counsel of failing to diligently follow up the request for the Taxing Officer's ruling, pursuant to Rule 11 of the Advocates (Remuneration) Order.
13. Counsel Jaoko points out that the Applicant's letters dated 4th November 2024 and 26th November 2024 were neither copied to his law firm nor were they posted in the e-portal.
14. Counsel depones that by an email dated 27th November 2021, he shared a copy of the ruling, which was readily available on the e-portal.
15. Rule 11 of the Advocates (Remuneration) Order sets out an elaborate procedure for objecting to a taxation by a Taxing Officer as follows:
 11. Objection to decision on taxation and appeal to Court of Appeal
 - (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)
16. Pursuant to a ruling by the Taxing Officer dated 30th October 2024, the Respondent's Advocates wrote to the Taxing Officer on 4th November 2024, raising objection to the taxation, specifically flagging the items on instruction fees and/or fees for getting up for hearing.



17. By a follow up letter dated 12th November 2024, the Respondent's Advocates complained about difficulties in accessing the formal ruling by the Taxing Officer.
18. Although the ruling was availed through the CTS, it would appear that the Taxing Officer did not respond to the Respondent's objection, prompting yet another letter from his Advocates dated 26th November 2024.
19. The Respondent's case is that the Taxing Officer has not responded to his objection as required under Rule 11 of the Advocates (Remuneration) Order.
20. On the other hand, the Applicant accuses the Respondent of failing to file a reference under the same provision. On this account, the Respondent claims that the ruling rendered by the Taxing Officer was comprehensive enough to address the Applicant's objection as contained in his Advocate's letter dated 4th November 2024.
21. In the Applicant's written submissions dated 14th February 2025, reference was made to the holding in Vincent Kibiwott Rono v Abraham Kiprotich Chebet & another [2022] eKLR that where a ruling by a Taxing Officer contains adequate reasons for taxation on contested items, there is no need to seek for further reasons.
22. I have had occasion to read the ruling by the Taxing Officer in this case and did not find any reasons for the specific items raised by the Respondent through his Advocates' letter dated 4th November 2024.
23. The Taxing Officer was therefore obligated to respond to the said letter and his failure to do so stalled the process set out under Rule 11 of the Advocates (Remuneration) Order. The Applicant should not be allowed to benefit from this unfortunate lapse occasioned by the Taxing Officer.
24. For the foregoing reasons, the Applicant's application dated 21st November 2024 is declined with an order that each party with bear their own costs.
25. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF APRIL 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Jaoko for the Applicant

Mr. Githinji for the Respondent

