



**EE Otieno & Co Advocates v Singh (Miscellaneous Application
E105 of 2024) [2025] KEELRC 1143 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1143 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E105 OF 2024**

SC RUTTO, J

APRIL 9, 2025

BETWEEN

EE OTIENO & CO ADVOCATES ADVOCATE

AND

DAVENDER PAL SINGH CLIENT

RULING

1. This Ruling arises from a taxation by Hon. Aziza Ajwang dated 17th October 2024, in which the taxing officer taxed the Advocate Client Bill of Costs in the sum of Kshs 4,303,376/=.
2. Being aggrieved by the said decision, the Clients/Applicants lodged the instant reference vide a Chamber Summons dated 18th November 2024 seeking the following orders:
 - a. Spent.
 - b. The Honourable Court be pleased to vacate and or set aside in its entirety the Ruling of Honourable Aziza Ajwang, Deputy Registrar delivered on 17th October 2024 and any reasoning arising therefrom and tax the matter afresh or refer the matter for fresh taxation before a taxing master.
 - c. The costs of this application be provided for.
3. The Application is premised on the grounds set out on its face and the Supporting Affidavit sworn on 18th November 2024, by Girija Ballav Mahapatra. Mr. Ballav deposes that in taxing the bill, the taxing officer misdirected herself in law in arriving at a decision that is untenable in law in terms of items 1, 2, 3, 6, 7, 8, 9, 10, 11 and 12 of the Bill of Costs.
4. That further, the taxing officer misdirected herself on points of law and the Ruling and reasoning in terms of items 1, 2, 3, 6, 7, 8, 9, 10, 11 and 12 of the Bill of Costs and the same ought to be set aside.



5. Mr. Ballav further avers that the taxing officer failed to completely consider the Applicants' comprehensive submissions in opposition to the Bill of Costs.
6. That the taxing officer misdirected herself by exercising her discretion on grounds that are both unclear, unreasonable and legally untenable in taxing items 1, 2, 3, 6, 7, 8, 9, 10, 11 and 12 of the Bill of Costs.
7. Mr. Ballav further deposes that the taxing officer used the wrong conversion scale in converting Indian Rupees to Kenya Shillings as at the date of taxing the Bill of Costs.
8. It is his further assertion that the taxing officer erred in law and in fact in allowing "Getting Up Fees", yet the matter never proceeded to trial at all.
9. That further, the taxing officer did not address herself to the fact that each of the 42 Claimants in the underlying suit was being represented by the Advocate in their individual capacities claiming different amounts.
10. That the taxing officer took into consideration issues that she shouldn't have and failed to consider issues she ought to have in the circumstances.
11. In Mr. Ballav's view, the impugned ruling and reasons were baseless in law and against the principle that costs should not be awarded as a punitive measure against a losing litigant.
12. That despite making a written notice and request for reasons for the decision, none has been provided by the taxing officer.
13. In response to the Chamber Summons, the Advocate/Respondent filed a Replying Affidavit sworn on 20th January 2025 by Emanuel Elija Otieno. Mr. Otieno deposes that his firm represented the Applicants in Milimani ELRC Cause No. E1027 of 2023; Devender Pal Singh & 41 others vs Mediheal Group Limited & 2 others.
14. Mr. Otieno avers that the taxing officer applied the correct legal principles in taxing the Advocate's Bill of Costs. That no error in law was made, and the taxing officer did not misdirect herself in taxing items 1, 2, 3, 6, 7, 8, 9, 10, and 11 of the Bill as alleged by the Applicants.
15. He further avers that contrary to the Applicants' assertion, the "Getting Up Fees" (item 2) was excluded from the final taxed amount, having been struck off during the taxation process.
16. It was Mr. Otieno's deposition that both the Advocate and the Applicants were afforded the opportunity to submit documents and arguments in support of and in opposition to the bill, which both parties duly did.
17. That in the absence of any compelling reason, the Applicants should not be permitted to seek the setting aside of the taxation simply because they are dissatisfied with the Court's decision, which was based on sound legal principles.
18. Mr. Otieno agrees with the Applicants that the taxing officer applied the incorrect conversion rate when converting Indian Rupees into Kenyan Shillings for the purpose of calculating the value of the subject matter.
19. In this regard, Mr. Otieno avers that in Milimani ELRC Cause No. E1027 of 2023, the Applicants sought recovery of Indian Rupees 122,743,059. That at the time of filing, the exchange rate was 1 Indian Rupee = 1.8385 Kenyan Shillings, as per the Central Bank of Kenya. Accordingly, the value of the claim in Kenyan Shillings amounts to Kshs.225,663,113.97 not Kshs.189,698,153.97 as determined by the taxing officer in her ruling.



20. Mr. Otieno further contends that the Applicants are not entitled to challenge the instruction fees (item 1) or the value of the subject matter, as the taxing officer adopted and accepted their own submissions regarding the value of the claim.
21. It is Mr. Otieno's contention that the reference should be dismissed in its entirety, save for the singular issue of recalculating the value of the subject matter based on the correct exchange rate.
22. According to Mr. Otieno, the taxing officer's decision, with respect to all other aspects of the taxation, was judiciously made and adhered to the appropriate legal principles.

Submissions

23. The Application was canvassed by way of written submissions. Both parties complied and the court has given due consideration to their respective submissions.

Analysis and Determination

24. As I can discern from the Application before me, the Response thereto as well as the rival submissions, the issue arising for determination is whether the taxing officer erred in law and principle while taxing the Advocate-Client Bill of Costs herein and thereby reached a wrong assessment.
25. The legal parameters within which the court can interfere with the taxing officer's decision are well settled. In *First American Bank of Kenya v Shah and Others* [2002] E.A.L.R 64 AT 69, Ringera J (as he then was) held as follows;

“First, I find that on the authorities, this 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”.

26. And further, the Court of Appeal in *Premchand Raichand Limited & Another v Quarry Services of East Africa Limited and Another* [1972] E.A 162 held that:

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award is somewhat too high or too low: it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other”.

27. The first issue raised by the Applicants is with respect to the conversion rate applied by the taxing officer when converting Indian Rupees to Kenyan shillings.
28. In as much as the Applicants have contended that the taxing officer applied an incorrect conversion rate, it is worth pointing out that the value of the subject matter as determined by the taxing officer was in consonance with the Applicants' submissions during the taxation proceedings.
29. Indeed, the Applicants have also reiterated the said amount in their submissions in support of the instant Application. What's more, the Applicants, despite their assertions, have not indicated the appropriate conversion scale that should have been applied by the taxing officer.
30. Further, it is notable that the basic instruction fees of Kshs. 3,045,472/= arrived at by the taxing officer corresponds with the Applicants' position in their submissions during the taxation proceedings and in the instant Application.



31. In light of the foregoing, the court is unable to decipher the Applicant's contention with respect to the conversion rate applied.
32. The second issue raised by the Applicants is that the taxing officer did not address herself to the fact that each of the 42 Claimants in the underlying suit were represented by the Advocates in their individual capacities claiming different amounts.
33. As I see it, the proposition by the Applicants appears to envisage a situation contemplated under Rule 62 of the Advocates (Remuneration) Order, thus:

Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other pleadings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate's bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.
34. The Court of Appeal in the case of *Desai Sarvia & Pallan v Tausi Assurance* [2017] KECA 456 (KLR) held that Rule 62 aforementioned, applies where an Advocate is engaged or instructed by two or more clients and files separate pleadings for each client.
35. It is not disputed that in the present case, the Advocate filed a unitary Claim for the Applicants. Therefore, the argument by the Applicants that the taxing officer did not address herself to the fact that each of the 42 Claimants in the underlying suit were represented by the Advocate in their individual capacities does not hold.
36. Accordingly, the Court does not find merit in this ground of objection.
37. The third issue raised by the Applicants is that the taxing officer erred in allowing "Getting Up Fees" yet the matter never proceeded for hearing.
38. A perusal of the impugned Ruling reveals that the taxing officer taxed off the "Getting Up Fees" on the basis that the matter did not proceed for hearing. Similarly, this ground of objection has no merit.
39. Another issue that was raised by the Applicants in their submissions is that the Advocate is not entitled to instruction fees at all, as he misadvised them into filing the suit. That after dismissing the Advocate herein, their new Advocate filed an application to have the matter referred to arbitration.
40. It is trite that an advocate is entitled to his fees once he is instructed, retained or employed by a client. This position was reiterated by the Court in the case of *Ratemo Oira & Co. Advocates vs. Magereza Sacco Society Ltd* [2019] eKLR.
41. In the premises, the Applicants' submissions on this issue have no basis.
42. All in all, the Court has not discerned any basis for interfering with the taxation.
43. For the foregoing reasons, the Court finds no merit in the Chamber Summons dated 18th November 2024. The same is accordingly dismissed with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI THIS 9TH DAY OF APRIL 2025.

STELLA RUTTO

JUDGE



In the presence of:

Ms. Munyungu for the Client/Applicants

Mr. Otieno for the Advocate/Respondent

Millicent 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

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