



Chepkwony & Associates Advocates v Cathmed Limited (Miscellaneous Application E010 of 2024) [2025] KEELRC 1943 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1943 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
MISCELLANEOUS APPLICATION E010 OF 2024**

M MBARŪ, J

JUNE 30, 2025

BETWEEN

CHEPKWONY & ASSOCIATES ADVOCATES APPLICANT

AND

CATHMED LIMITED RESPONDENT

RULING

1. The applicant filed an application dated 13 December 2024 under articles 47, 50, and 159 of *the Constitution* and Rule 11(2) of the Advocates Remuneration Orders, Order 51, Rule 1 of the Civil Procedure Rules, seeking orders.

"The court is pleased to set aside the decision of the Deputy Registrar in the Ruling dated 10 December 2023 and reassess and tax afresh the Applicant's Advocate-Client Bill of Costs dated 1 August 2024."

2. The application is based on the grounds that, following instructions to defend the respondent, the applicant prepared a response and attended court for Ksh. 61,700. The respondent subsequently refused to pay the legal fees and engaged another advocate, as outlined in the Notice of Change of Advocates dated 22 July 2023.
3. On 1 August 2024, the applicant filed the Advocate-Client bill of costs against the respondent for payment of Ksh 3. 246,443.33 from the respondent.
4. In a ruling delivered on 10 December 2024, the Deputy Registrar taxed the bill at Ksh.430, 000 the sum of which had already been paid. Aggrieved by the ruling and taxation, the applicant prefers this reference against the taxation for reassessment by this court. The reason is that the applicant moved the court to challenge its decision because the taxing officer made an error based on the order that there was an oral agreement between the parties that the amount already paid suffices for the work done. The taxing master order contravened the provisions of section 45(1) of the *Advocates Act*, which permits



- the making of an agreement before or after or in the course of any contentious business, fixing the amount of the advocate's remuneration in respect thereof, which agreement is binding on the parties. There was no written agreement.
5. The applicant filed the Supporting Affidavit of Jackline Chepkurui Chepkwony who avers that the findings by the Deputy Registrar that the bill of costs is taxed as per the oral agreement between the parties disregarded the scale fees prescribed under Schedule VI9J) of the Advocates (Remuneration) (Amendment) Order which is applicable in respect of instructions fees.
 6. In awarding Ksh 430,000 as total fees, the Deputy Registrar failed to consider that the applicant's claim for instruction fees is provided under the law, and no justification for the sum awarded is given. There were no reasons why the awarded sum was considered in this case.
 7. The nature of the proceedings before the court was not considered. The failure to apply the Advocates Remuneration Order's provisions is unjustified.
 8. In reply, the respondent filed the Replying Affidavit of Marco Bononcini and avers that he is the director. In 2024, the respondent instructed the applicant to defend it in Malindi ELRC Cause No. E003 of 2024. The applicant demanded Ksh—200, 000 in fees which was paid on 20 April 2024. On 7 June 2024, the respondent was issued another requisition note for Ksh—230,000, which was paid through a cheque.
 9. These payments were agreed by both parties and captured in proceedings before the taxing officer. While taxing the bill of costs correctly, the Deputy Registrar held that the law does not allow the court to tax costs when there is an agreement between the advocate and the client. The ruling regarding section 45(6) of the Advocates Act was correct.
 10. The respondent has paid Ksh. 430,000 to the applicant, which is reasonable for the work done, as instructions were withdrawn before the matter was set down for hearing. The bill of costs dated 1 August 2024 was baseless since the due expenses had already been settled.
 11. The applicant filed a Further Affidavit and stated that the sum paid by the respondent was merely a deposit and not the final amount to settle the entire case. The parties had no written agreement regarding the fees payable to conclude the matter. Instruction fees are an independent and fixed term, charged once only and not affected or determined by the stage the suit reaches. The instructions in this case were withdrawn when the matter was due for pre-trial, and the applicant had prepared a defence, a list of documents, and witnesses. Therefore, the respondent cannot argue that the deposit paid is sufficient since they withdrew instructions before the case could proceed to a hearing.
 12. The applicant submitted that the respondent issued instructions to attend and defend the matter in Malindi ELRC Cause No. E003 of 204 and paid a deposit of Ksh. 430,000 in instruction fees. The contested claim was for Ksh. 61,700,000. The applicant filed a response and prepared the documents; however, the respondent withdrew the instructions on 22 July 2023.
 13. The taxing officer erred in law and fact in finding that there was an oral agreement on the fees to be paid. There was no agreement on the fees to be charged; hence, the Advocates Remuneration Order applied. On the total claim of Ksh. 61, the due costs are Ksh. 246,443. In the case of Ahmednasir Abdikadir & Company Advocates v. National Bank of Kenya Ltd, the court held that section 45(1) of the Advocates Act requires that any agreement on fees be in writing and signed by the client. In Kkuta Maimai Hamisi Peris Pesi Tobiko v. IEBC & others, the court held that to constitute a valid agreement under section 45 of the Advocates Act, the same must be in writing. In this case, there was no written agreement, and the retainer fees paid were not in full payment. The Deputy Registrar made an error in assessing the bill of costs, and it should be reviewed.



14. The respondent submitted that the applicant filed the Bill of Costs in Malindi ELRC No.E003 of 2024. When the Notice of Change of Advocate was filed, the matter was not scheduled for a hearing. The respondent paid Ksh.430, 000 in settlement of the due fee based on the Requisition Note by the applicant. Parties agreed to settle the fees owed, and therefore, the Bill of Costs filed by the applicant had no basis and was correctly dismissed by the Deputy Registrar, as held in *Otieno Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR.

Determination

15. Although the Notice of Change of Advocates is dated 22 July 2023, it was filed on 17 December 2024. It was served on the applicant and received on 31 July 2024.

These dates are completely illogical.

The suit was filed in Malindi in 2024 under ELRC E003 of 2024.

The Notice of Change of Advocates was filed on 17 December 2024.

The applicant received the Notice of Change of Advocate on 31 July 2024.

16. There is a handwritten note on the served Notice that it reached the applicant on 13 December 2024.
17. If the notice was filed on 17 December 2024, it cannot have been served on 31 July or 13 December 2024.
18. Another issue is the Bill of Costs filed by the applicant on 1 August 2024. Where the Notice of Change of Advocate was filed on 17 December 2024 and served on 13 December 2024, the ruling delivered on 10 December 2024 related to events not yet achieved.

19. The variances are further exacerbated by the letter of demand dated 28 June 2024 for the payment of Ksh 2,622,759.42, which states that the applicant was instructed to defend the matter in Malindi ELRC E003 of 2024.

The Bill of Costs attached in support of the due fees indicated that;

20. On 13 June 2024, the applicant received instructions to defend the respondent at Ksh. 2,936,685,
On 4 June 2024, the applicant perused the Memorandum of Claim,
On 4 June 2024, a Memorandum of Appearance was filed.
21. Cumulatively, if correct as stated, these dates do not tell a proper story. Instructions cannot be issued after documents have been taken and filed in court. Unless acting out of benevolence, the dates outlined are not correct.
22. The instant referenced in the presented facts and materials cannot suffice. Filing the instant application under Article 159 of *the Constitution* cannot cure the inconsistencies apparent on the face of the record. A reference such as herein filed is not an ordinary suit. It emanates from the *Advocates Act*, where Counsel seeks to address the payment of professional fees. It thus results from professional attendance, so the errors noted should be rare.
23. Parties shall revert to the trial court and address. The instant application is dismissed with costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30 JUNE 2025.

M. MBARŪ



JUDGE

In the presence of:

Court Assistant: Japhet

..... and

