



Juliet Akinyi Dima t/a Juliet Dima & Associates Advocates v JRS Group Ltd (Miscellaneous Application E093 of 2023) [2024] KEELRC 882 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 882 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E093 OF 2023**

S RADIDO, J

APRIL 24, 2024

BETWEEN

**JULIET AKINYI DIMA T/A JULIET DIMA & ASSOCIATES
ADVOCATES APPLICANT**

AND

JRS GROUP LTD RESPONDENT

RULING

1. The Taxing Officer found a Bill of Costs filed by Juliet Dima & Associates Advocates (the advocate) incompetent on 6 December 2023 and struck it out.
2. The advocate was aggrieved and she filed a Reference on 20 December 2023, seeking orders:
 - i. That the Ruling of the Honourable F. Rashid (Deputy Registrar) dated December 6, 2023, relevant to the applicant's Advocate-Client Bill of Costs dated August 1, 2023 be set aside.
 - ii. That the said Bill of Costs be taxed and a Certificate of Taxation thereof be issued accordingly.
 - iii. That the costs of this application be provided for.
3. The primary grounds in support of the Reference were that the Taxing Officer had erred in law and fact in interpreting paragraph 13(3) of the *Advocates Remuneration Order*, 1962; in finding that a formal retainer was necessary before recovering legal fees and that legal fees were not recoverable because her services were terminated before conclusion of the Cause.
4. JRS Group Ltd (the Respondent) filed Grounds of Opposition to the Summons on 11 February 2024 contending that:
 - i. The application offends the mandatory provisions of the law upon which it is premised.



- ii. The application is without foundation or merit as the applicant has not annexed a valid Notice of Objection to taxation as well as reasons of the Taxing Officer of the alleged errors of principle and objection to the taxation.
 - iii. The application is misconceived and incompetent having been filed without the benefit of the reasons of the Taxing Officer for the decision sought to be challenged under the provision of paragraph 11(2) of the [Advocates Remuneration Order](#).
5. When the Summons was placed before the Court on 12 February 2024, it directed the parties to file and exchange submissions ahead of oral highlights on 4 March 2024.
 6. The advocate filed her submissions on 26 February 2024 and the Respondent on 3 March 2024.
 7. On 15 April 2024, the parties appeared before Baari J and proposed and the Judge ordered that this Ruling apply to Kisumu Misc Application No. E014 of 2023, Kisumu Misc Application No. E015 of 2023, Kisumu Misc Application No. E016 of 2023, Kisumu Misc Application No. E017 of 2023, Kisumu Misc Application No. E018 of 2023, Kisumu Misc Application No. E019 of 2023, Kisumu Misc Application No. E020 of 2023, Kisumu Misc Application No. E021 of 2023 and Kisumu Misc Application No. E022 of 2023.
 8. The Causes referred to arose from similar Ruling by the Taxing Officer.
 9. In the submissions, the advocate admitted that she had not exhibited a copy of the Notice of Objection to the instant application but asserted that she had filed a Notice of Objection in the Bill of Costs file and that, therefore, there was substantial compliance with paragraph 11(2) of the [Advocates Remuneration Order](#).
 10. The failure to attach the Notice of Objection, the advocate urged was not fatal and support was drawn from a passage from the Court of Appeal authority of [Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund](#) (2005) 1 KLR 528 that:

Although there was no strict compliance with Rule 11(2) of the order, we are nevertheless satisfied that there was substantial compliance.
 11. With respect to the objection that the reasons for the taxation were not sought, the advocate urged the Court to follow the path taken by the Court in [Rachuonyo & Rachuonyo v National Bank of Kenya Ltd](#) (2021) eKLR where the Court held that:

it is now established that a ruling contains the reasons for the taxation hence it is unnecessary to request for specific reasons for each item taxed.
 12. On the merits, the advocate contended that the Taxing Officer did not call upon the parties to address her on a proper interpretation of paragraph 13(3) of the [Advocates Remuneration Order](#), 1962.
 13. According to the advocate, what paragraph 13(3) of the [Advocates Remuneration Order](#), 1962 required and provided for was for a party to file a Bill of Costs through a Miscellaneous Cause and that in such a Bill, instructions fees could not be charged for filing the Bill of Costs.
 14. The advocate argued that instruction fees in such cases were just one of the items for taxation and its inclusion could not be a basis for striking out the entire Bill of Costs.
 15. Making submissions on the question of retainer, the advocate asserted that the position taken by the Taxing Officer was not supported by the provisions of sections 44 and 45 of the [Advocates Act](#) or the [Advocates Remuneration Order](#).



16. The advocate concluded by submitting that she had a legitimate expectation of the payment of legal fees for the services she rendered.
17. The Respondent admitted in its submissions that the advocate wrote a letter to the Taxing Officer seeking explanations for the Ruling but contended that the letter did not amount to an Objection as envisaged under paragraph 11(2) of the *Advocates Remuneration Order*. The Respondent also asserted that the Taxing Officer did not respond nor furnish the reasons for the Ruling striking out the Bill of Costs.
18. According to the Respondent, the purported Notice of Objection was not valid. Consequently, the Respondent urged the Court to adopt the position taken in *Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Ors* (2013) eKLR and not aid the advocate in avoiding sticking to the rules.
19. Responding to the cry by the advocate that the Taxing Officer addressed an issue not raised by the parties, the Respondent took the position that it was open to the Taxing Officer to take the matter up so long as it was within the parameters of the issues in dispute.
20. The Court has considered the Summons, affidavit, Grounds of Opposition and submissions.

Notice of Objection/reasons for taxation

21. The Taxing Officer struck out the Bill of Costs presented by the advocate on the ground of incompetence. She gave detailed reasons in the Ruling why she felt the Bill of Costs was incompetent and the advocate as a formality wrote to the Taxing Officer seeking an explanation.
22. In this Court's view, since the Taxing Officer did not tax any of the items in the Bill but struck it out, and she had given the reasons in the body of the Ruling, it was not necessary for her to give any further reasons or explanations.

Formal retainer

23. Despite the Taxing Officer finding that there was no formal retainer between the advocate and the Respondent, the advocate had exhibited a letter dated 20 November 2021 from the Respondent instructing her to take over the Causes and represent it.
24. The Court has also noted that in some of the files, the advocate on record now for the Respondent and the advocate filed Consents to come on record in place of Juliet Dima & Associate Advocates on or around July 2022.
25. In the Court's view, the letter gave explicit instructions to the advocate to represent the Respondent, and the conclusion by the Taxing Officer that there was no formal retainer was erroneous.

Merits

26. The advocate challenged the interpretation the Taxing Officer placed on paragraph 13(3) of the *Advocates Remuneration Order*, 1962.
27. The paragraph provides:

13

- (3) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof.



28. The Taxing Officer in addressing her mind to the provision stated:
- My interpretation of the Rule above is that an advocate may not file an advocate client bill of costs when the parent file is similarly (sic) another advocate client bill of costs as this would mean the Respondent would be taxed to infinity. Litigation on costs would therefore not come to an end.
29. This Court's understanding of the provision is that an advocate client bill of costs shall be presented by the advocate through a miscellaneous application and that in presenting the bill for taxation, the advocate would not be entitled to claim instructions fees for presenting the bill. This is so because the bill belongs to the advocate and is not presented at the behest of the client.
30. The advocate herein presented her bill of costs through miscellaneous applications and she did not fall afoul of the provision relied on by the Taxing Officer to strike out the Bill of Costs.
31. The Court finds that the Taxing Officer fell into an error of principle in striking out the Bill of Costs.

Orders

32. The References are allowed, and the Taxing Officer is directed to tax the Bill of Costs afresh.
33. This Ruling will apply to the Causes :
- i. Kisumu Misc Application No. E094 of 2023
 - ii. Kisumu Misc Application No. E095 of 2023
 - iii. Kisumu Misc Application No. E096 of 2023
 - iv. Kisumu Misc Application No. E097 of 2023
 - v. Kisumu Misc Application No. E098 of 2023
 - vi. Kisumu Misc Application No. E006 of 2024
 - vii. Kisumu Misc Application No. E007 of 2024
 - viii. Kisumu Misc Application No. E008 of 2024
 - ix. Kisumu Misc Application No. E009 of 2024
 - x. Kisumu Misc Application No. E010 of 2024
 - xi. Kisumu Misc Application No. E011 of 2024
 - xii. Kisumu Misc Application No. E012 of 2024
 - xiii. Kisumu Misc Application No. E013 of 2024
 - xiv. Kisumu Misc Application No. E014 of 2024
 - xv. Kisumu Misc Application No. E015 of 2024
 - xvi. Kisumu Misc Application No. E016 of 2024
 - xvii. Kisumu Misc Application No. E017 of 2024
 - xviii. Kisumu Misc Application No. E018 of 2024



- xix. Kisumu Misc Application No. E019 of 2024
- xx. Kisumu Misc Application No. E020 of 2024
- xxi. Kisumu Misc Application No. E021 of 2024
- xxii. Kisumu Misc Application No. E022 of 2024

34. Costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 24TH DAY OF APRIL 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For advocate/applicant Mr Jeji instructed by Juliet Dima & Associates Advocates

For Respondent Mr Indimuli instructed by Hussein B. Indimuli Advocate

Court Assistant Chemwolo

