



**Farrah Hamoud Dawood and Moses Sitati Munoko t/a Farrah Munoko
& Company Advocates v Onyango (Miscellaneous Application
E164 of 2022) [2024] KEELRC 1172 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1172 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E164 OF 2022**

SC RUTTO, J

APRIL 19, 2024

BETWEEN

**FARRAH HAMOUD DAWOOD AND MOSES SITATI MUNOKO T/A FARRAH
MUNOKO & COMPANY ADVOCATES ADVOCATE**

AND

RICHARD OTIENO ONYANGO RESPONDENT

RULING

1. Through a Notice of Motion Application dated 18th September 2023, the Advocate/Applicant herein prays for the following orders:
 - a. That judgment be entered against the Respondent/Client herein in the sum of Kshs 114,205.00 in terms of the certificate of taxation dated 11th April 2023 issued by Hon. F.M Nyamora, Deputy Registrar.
 - b. That this Honourable Court be pleased to adopt the certificate of taxation dated 11th April 2023 as a decree of the Honourable Court and the Advocate/Applicant be at liberty to execute.
 - c. The Court do issue as to costs.
2. The Application is supported by the grounds therein and on the depositions contained in the Supporting Affidavit sworn on 18th September 2023, by Mr. Dawood Hamoud Farrah.
3. Mr. Farrah deposes that the Respondent/Client appointed the firm of Messrs. Farrah Munoko & Company Advocates (Applicant), to represent him in Nairobi ELRC Petition No. 2099 of 2017: *Richard Otieno Onyango vs. Standard Chartered (K) Limited*. Upon instructions, the Applicant proceeded to prosecute the suit to its finality until judgment was rendered. He avers that the Applicant



- sought to have its final fees settled in the matter but the same was never done which culminated in the filing of the Advocate-Client Bill of Costs dated 7th October 2022.
4. That the Respondent/Client entered appearance through the firm of Shisanya and Company Advocates, and in response to the Advocate-Client Bill of Costs, filed submissions dated 7th March 2023.
 5. The matter came up for Taxation and was duly taxed on 31st March 2023 before Hon. F. M. Nyamora, Deputy Registrar against the Respondent/Client in the sum of Kshs. 114,205.00.
 6. Mr. Farrah further avers that the Applicant applied for and extracted the Certificate of Taxation which was issued on 11th April 2023. In attempts to recover sums awarded in the Certificate of Taxation, the Applicant demanded settlement of the taxed amount via a letter dated 14th April 2023 which the Respondent/Client has since failed to honour hence the said Certificate of Taxation still remains unsatisfied.
 7. Mr. Farrah contends that the said Certificate of Taxation has not been set aside or altered by the Honourable Court and is thereby final as to costs certified to be due to the Applicant in this matter.
 8. Upon being served with the Motion Application by the Applicant, the Respondent/Client responded by filing a Motion Application dated 27th November 2023, seeking the following principal order: That this Honourable Court be pleased to discharge, vary, review and/ or set aside the Ruling delivered on 31st March 2023.
 9. The said Application is premised on the grounds therein and the Affidavit of Mr. Richard Onyango Otieno, the Respondent/Client. In the said Affidavit which was sworn on 27th November 2023, Mr. Onyango deposes that at the time of responding to the Bill of Costs, he could not trace an exceedingly crucial document which is a receipt of payment dated 13th December 2017 from the Applicant which clearly shows that he had paid an amount of Kshs. 20, 000.00 and the balance of fees was balance of fees to be paid Kshs. 41,750. 00.
 10. Mr. Onyango further deposes that he had misplaced the said document when he was moving houses but was fortunate to trace it from his brother whom he had been staying with. That the instant receipt shows what the balance owed to the Applicant was. As such, he contends that the sum awarded by the taxing officer is way above what they had agreed to as legal fees.
 11. He believes that had the said receipt been available at the time of defending the Bill of Costs, the taxing officer would have arrived at a different determination.
 12. The Applicant opposed the Respondent's Application through a Replying Affidavit of Mr. Dawood Hamoud Farrah, sworn on 28th December 2023. According to Mr. Farrah, he finds great difficulty in discerning the Respondent's Application to the extent that it leaves glaring legal loopholes as to whether the same is a review within the meaning of Order 45 of the *Civil Procedure Rules, 2010* or a reference against the decision of the taxation master dated 11th April 2023 within the meaning of Rule 11 of the *Advocates Remuneration Order*.
 13. In his view, it is clear that the Respondent's Application is not a reference within the meaning of Rule 11 of the *Advocates Remuneration Order* as it has been brought outside the legal timelines specified.
 14. He further deposes that at the time the Advocate/Applicant took up instructions in the matter, the Respondent indicated that he was unable to pay legal fees since he was unemployed. They agreed that the same would be settled at a later date upon securing alternative employment and/or the Applicant to deduct the equivalent of 30% from the final award/Judgment.



15. Mr. Farrah contends that the Respondent intentionally failed to bring to the attention of this Honourable Court that indeed, he had paid to the Advocate a total sum of Kshs 50,000.00 as part payment of legal fees/disbursements which sums had been incorporated and deducted from the Advocates' bill of costs. That the Applicant has not produced before this Honourable Court a receipt or payment of the admitted sums of Kshs 50,000.00.
16. He avers that the part payment made by the Applicant herein was duly taken into consideration by the taxing master and the review sought herein is wholly misguided and unwarranted.

Submissions

17. Both Applications were canvassed by way of written submissions. The Applicant/Advocate submitted that the Respondent cannot at this stage purport to produce a document with the aim of disputing the entire bill of costs as this is a matter that ought to have been decided by the taxing master. In support of this argument, the Applicant placed reliance on the case of *Kitih & Company Advocates v Menegai Downs Limited* (2015) eKLR.
18. The Applicant stated in further submission that all payments made by the Respondent/Client were duly taken into consideration prior to the taxing master arriving at the duly taxed amount.
19. It was further submitted by the Applicant that the Respondent has not filed a reference challenging the discretion of the taxation master and as such, his Application cannot be used to substitute well laid out procedures of this Honourable Court.
20. On his part, the Respondent/Client submitted that the total amount agreed with his Advocate (Applicant) was Kshs 61,750.00 and he had already paid a sum of Kshs 20,000.00 thus leaving a balance of Kshs 41,750.00.
21. It was the Respondent's further submission that during taxation, it was clear that he had paid the Advocates a sum of Kshs 50,000.00 hence if at all he owes the Advocates any more money, the same would be Kshs 11,750.00.
22. The Respondent further submitted that the Applicant/Advocate does not deny the authenticity of the receipt alluded to. That in fact, the Advocate has not given any explanation as to why they would quantify their fees at Kshs 61,750.00 but elect not to produce any agreement allowing them to deduct 30% of the decretal amount in the event of a successful outcome.
23. He further argued that his Application for review has been brought without unreasonable delay. It was his further submission that post 2010 *Constitution*, Courts have taken the position that substantive justice must outweigh procedures. That substantive justice would demand that this Honourable Court be pleased to set aside the ruling of 31st March 2023 in view of the receipt he had produced.

Analysis and Determination

24. I have considered the issues raised in the two Applications before me, the grounds in support thereof as well as the rival submissions and the following issues stand out for determination:
 - a. Whether the Court should discharge, vary, review and/or set aside the Ruling delivered on 31st March 2023 by the taxing master;
 - b. Depending on the answer in (a), whether the Court should enter judgment against the Respondent/Client in terms of the Certificate of Taxation dated 11th April 2023.



Whether the Court should discharge, vary, review and/or set aside the Ruling delivered on 31st March 2023 by the taxing master

25. From the record, the Ruling by the taxing master allowed the Applicant/Advocate's bill of costs at Kshs 114,205.00. It is that taxation that the Respondent/Client now seeks to discharge, vary, review and/or set aside through the Application dated 27th November 2023.
26. With regards to objections to decisions on taxation, Rule 11 of the [Advocates Remuneration Order](#), provides as follows:
 - (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) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
27. As stated herein, the Ruling on Taxation was delivered on 31st March 2023. However, there is no evidence or indication from the Respondent/Client that he wrote to the taxing master notifying him of the items that he wished to object to.
28. Further, it is my considered view that the Respondent/Client's Application dated 27th November 2023 is not a Reference or Objection to the taxation within the meaning of Rule 11 aforementioned. It is a Review application.
29. According to the Respondent, he has evidence in the form of a receipt document, which shows how much fees he had paid and the balance he owed the Advocate/Applicant. His argument is that if considered, the taxing master would have arrived at a different determination.
30. With tremendous respect to the Respondent, it is not within the purview of this Court to make a determination with regards to the significance of the said receipt and its bearing on the taxation. That is exclusive to the taxing master.
31. On this issue, I will align myself with the determination in [Donholm Rabisi Stores \(firm\) v EA Portland Cement Ltd](#) [2005] eKLR where it was held that:

“Taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the taxing officer by the [Advocates Remuneration Order](#). The court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the [Advocates Remuneration Order](#).”



32. I further agree with the determination by the Court in the case of *Kitibi & Co. Advocates v Menengai Downs Ltd* (2015) eKLR that the Court cannot go behind the certificate of taxation to inquire if there are monies that had been paid but not taken into account.
33. In view of the foregoing, it is this Court's finding that the Respondent/Client having failed to file an Objection or Reference, the Court cannot exercise its discretion in his favour to revisit the taxation and discharge, vary, review or set it aside.
34. To this end, I find no merit in the Respondent/Client's Notice of Motion Application dated 27th November 2023 and the same is disallowed.
35. That said, I now turn to determine the second issue which is whether the Court should enter judgment against the Respondent/Client in terms of the Certificate of Taxation dated 11th April 2023.

Judgment in terms of the Certificate of Taxation?

36. From the record, the Advocate-Client Bill of Costs was filed on 7th October 2022 and the same was taxed at Kshs 114,205.00 in favour of the Applicant and a Certificate of Taxation issued on 11th April 2023. Notably, the Respondent/Client did not move to have the Certificate of Taxation set aside or varied before the filing of the Applicant's Application dated 18th September 2023.
37. It is worth pointing out that the Respondent/Client, did not respond to the Application dated 18th September 2023. Accordingly, the Application by the Applicant/Advocate was not opposed.
38. The Application dated 18th September 2023, by the Applicant has been brought pursuant to section 51(2) of the *Advocates Act* which provides as follows:
 - (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order In Relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."
39. It is evident from the above provision that the Certificate of Taxation once issued by the taxing master, is final unless set aside or altered by the court. The court may also make an order that judgment be entered in Terms Of The amount in the certificate of costs.
40. In this case, the Bill of Costs was taxed on 31st March 2023 but was not challenged in a procedural manner by the Respondent/Client. This being the case, the amount entered by the taxing master is due to the Applicant.
41. In the circumstances, the Application dated 18th September 2023 is hereby allowed as follows;
 - a. Judgment is hereby entered against the Respondent/Client in favour of the Applicant/Advocate for the sum of Kshs. 114,205.00 as per the Certificate of Taxation issued on 11th April 2023.
 - b. Interest at court rates from 18th September 2023, which is the date the Application was filed, until payment in full.
 - c. The Applicant is at liberty to commence execution for recovery of costs.
42. The Application dated 27th November 2023 by the Respondent/Client is disallowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF APRIL 2024.



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STELLA RUTTO

JUDGE

In the presence of:

Mr. Farrah for the Applicant/Advocate

Ms. Samena instructed by Mr. Shisanya for the Respondent/Client

Kemboi 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

