



**Kemboy Law Advocates v Narok County Government (Miscellaneous Application E110 of 2023) [2024] KEELRC 2362 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2362 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E110 OF 2023**

**L NDOLO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**KEMBOY LAW ADVOCATES ..... ADVOCATE**

**AND**

**NAROK COUNTY GOVERNMENT ..... CLIENT**

**RULING**

1. This ruling proceeds from the Chamber Summons application dated 14<sup>th</sup> December 2023, by which the Advocate/Applicant seeks the following orders:
  - a. That the decision of Hon E. Riany delivered on 5<sup>th</sup> December 2023 declining to tax the Advocate-Client Bill of Costs dated 20<sup>th</sup> May 2023 be set aside and/or vacated;
  - b. That the Court be pleased to assess and quantify and/or direct the assessment of the Advocate-Client Bill of Costs dated 20<sup>th</sup> May 2023, by any other Taxing Officer, other than Hon E. Riany.
2. The application is premised on the following grounds:
  - a. The learned Taxing Officer misdirected herself on the principles of law applicable in the taxation of Advocate-Client Bill of Costs;
  - b. The learned Taxing Officer misapprehended and misapplied the law and principles of taxation, with respect to the nature of the Bill and failed to correctly apply the principles provided in Schedule 11 of the *Advocates (Remuneration) Order*, 2014;
  - c. The learned Taxing Officer did not apply her mind properly to the suit giving rise to the taxation of the Advocate-Client Bill of Costs dated 20<sup>th</sup> May 2023 and thereby arrived at an erroneous decision;



- d. The learned Taxing Officer erred in law and fact by failing to properly exercise the powers and discretion granted to her under the *Advocates (Remuneration) Order*;
  - e. The learned Taxing Officer erred in law and fact by striking out the Advocate-Client Bill of Costs, on the basis that the Magistrate’s Court has jurisdiction to determine costs in contentious matters between Advocate and Client in the first instance;
  - f. The learned Taxing Officer erred in law by arriving at an improper decision, while placing reliance on the following cases, which are distinguishable and have no relevance or bearing on the taxation of the Advocate-Client Bill of Costs dated 20<sup>th</sup> May 2023:
    - i. *Invesco Assurance Company Limited v Chigiti Advocates* [2018] eKLR, which primarily dealt with the issue of jurisdiction of a single Deputy Registrar to determine an amalgamated Advocate-Client Bill of Costs arising out of various matters filed in various courts throughout the Country;
    - ii. *Peter Njuguna Njoroge v Julius Naranclak Ologolomot* [2010] and *Nyamogo and Nyamogo Advocates v Pan Africa Insurance Company Limited & another* [2016] eKLR which dealt with the jurisdiction of the Deputy Registrar to determine Party to Party Bill of Costs arising from awards in the lower courts.
  - g. The learned Taxing Officer erred in law by determining the Client’s Preliminary Objection, while declining jurisdiction to determine the Advocate-Client Bill of Costs;
  - h. The learned Taxing Officer’s misapplication of applicable law and principles jeopardises the Advocate’s rights and interests and risks occasioning injustice upon the Advocate, if the ruling delivered on 5<sup>th</sup> December 2023 is not set aside;
  - i. It is in the interest of justice that the orders sought are granted.
3. The Client’s response is by way of a replying affidavit sworn by its County Secretary, John Mayiani Tuya on 11<sup>th</sup> March 2024.
  4. Tuya depones that subsequent to the Advocate’s Bill of Costs dated 20<sup>th</sup> May 2023, the Client filed a notice of Preliminary Objection dated 24<sup>th</sup> July 2023 stating that:
    - a. The Court lacks jurisdiction to determine the matter as per the provisions of Section 4 of the *Arbitration Act*;
    - b. The Bill of Costs is an abuse of the court process, bad in law and incapable of being entertained by the Court as the Advocate has infringed the doctrine of exhaustion.
  5. Tuya further depones that the Client, in its response to the Bill of Costs, dated 2<sup>nd</sup> October 2023, objected to the jurisdiction of the Court to entertain the matter. The Client also objected to most of the amounts billed by the Advocate.
  6. Tuya points out that on 5<sup>th</sup> December 2023, Hon E. Riany delivered a ruling striking out the Bill of Costs on the ground that it ought to have been filed at the Chief Magistrate’s Court as it arose from CMELRC No 1088 of 2019.
  7. The Client asserts that the present application is incompetent and an abuse of the court process as it contravenes Rule 11(2) of the *Advocates (Remuneration) Order*, for want of a supporting affidavit.



8. In urging their respective cases, the parties presented convoluted issues. However, the only issue meriting my determination is whether the learned Taxing Officer was justified in striking out the Advocate-Client Bill of Costs dated 20<sup>th</sup> May 2023.
9. In her impugned ruling dated 5<sup>th</sup> December 2023, the Taxing Officer rendered herself as follows:

“ Even if paragraph 11 of the *Advocates Remuneration Order*, grants the Deputy Registrar original jurisdiction to tax any Bill, that concept does not operate to oust the jurisdiction of the Subordinate Court that has similar jurisdiction to tax bill of costs in the first instance... Under Part III of the *Advocates Remuneration Order*, a Magistrate’s Court has jurisdiction to determine costs in contentious matters between Advocate and Client...Indeed this Court has original jurisdiction to tax bills of cost as stipulated under Paragraph 11 of the *Advocates Remuneration Order*. However, it is noteworthy that the court has to guard its territorial jurisdiction for control and orderly management of cases brought before it. Otherwise to take up taxation matters on proceedings under the Magistrates court will open floodgates of such matters to unmanageable dimensions and lead to backlog in this court.”
10. The Advocate faults the Taxing Officer’s decision, stating that she misapprehended the law and practice on taxation. In this regard, the Advocate sought to distinguish the decisions in *Invesco Assurance Company Limited v Chigiti and Chigiti Advocates* [2018] eKLR, *Peter Njuguna Njoroge v Julius Naraniclak Ologolomot* [2010] eKLR and *Nyamogo and Nyamogo Advocates v Pan Africa Insurance Company Limited & another* [2016] eKLR, relied upon by the Taxing Officer.
11. While *Invesco v Chigiti and Chigiti* (*supra*) dealt with taxation of an amalgamated Advocate-Client Bill of Costs, by a single Taxing Officer, *Peter Njoroge v Julius Ologolomot* (*supra*) and *Nyamogo and Nyamogo v Pan Africa* dealt with Party and Party Bills in the lower court. These decisions are therefore evidently distinguishable.
12. Further, there is nothing in Part III of the *Advocates (Remuneration) Order* which provides a mechanism for a Magistrate’s Court to tax an Advocate-Client Bill of Costs. In this regard, I agree with the holding by D.O Ohungo J in *Munzala & another v Emily Kadenyi t/a Emily & Associates Advocates* [2023] KEELC 21519 (KLR) (14 November 2023) (Ruling) that:

“ Strictly speaking, no bills of costs are expected to be filed in the Subordinate Courts. Whenever parties need to have party and party costs determined in the Subordinate Court, they simply write to the court a letter itemizing what they deem to be their costs. The court then assesses such costs as opposed to taxing a bill.”
13. The foregoing position is fortified by the provisions of Order 21 Rule 9A of the *Civil Procedure Rules*. The corollary is that a Magistrate’s Court has no jurisdiction to tax a detailed Bill of Costs emanating from a dispute between an Advocate and their Client.
14. That said, I find and hold that the Taxing Officer fell into error by striking out the Advocate-Client Bill of Costs 20<sup>th</sup> May 2023. Her decision as contained in the ruling dated 5<sup>th</sup> December 2023 is therefore set aside, and the Bill of Costs dated 20<sup>th</sup> May 2023 is reinstated and remitted for taxation by any other Taxing Officer other than Hon E. Riany.
15. The Advocate will have the costs of the application.
16. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY SEPTEMBER 2024.**



**LINNET NDOLO**

**JUDGE**

Appearance:-

Mr. Kere for the Advocate/Applicant

Mr. Kaloki for the Client/Respondent

