



Amutavi v Kenya Electricity Transmission Company Ltd (Employment and Labour Relations Cause 858 of 2017) [2024] KEELRC 2714 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2714 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 858 OF 2017**

**K OCHARO, J
OCTOBER 31, 2024**

BETWEEN

NICHOLAS SHIVAJI AMUTAVI CLAIMANT

AND

KENYA ELECTRICITY TRANSMISSION COMPANY LTD RESPONDENT

RULING

Introduction

1. By a Chamber Summons application dated 22nd March 2023, expressed to be under the provisions of Rule 11[2] of the Advocates Remuneration Order, the Respondent seeks;
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to set aside the Taxing Officer's decision delivered on the 14th of March 2023 as it relates to the reasoning and determination of items NO. 1 & 39 of the Claimant's Bill of Costs dated 12th October 2022.
 - d. That the Honourable Court exercises its inherent jurisdiction and be pleased to re-tax the Bill of Costs dated 12th October 2022.
 - e. That in the alternative to prayer 4 above, the Honourable Court exercises its inherent jurisdiction and refer the Bill of Costs dated 12th October 2022 to another Taxing Officer for re-taxation or make fresh directions to a fresh taxation.
 - f. That costs of this application be provided for.
2. The application is premised on the grounds obtaining on the face thereof, and the supporting affidavit sworn on 22nd March 2023, by Lydia Wanja, the Respondent's Manager of Legal Services.



3. The Claimant resisted the application by filing grounds of opposition dated 11TH April 2023.

The Application

4. The applicant stated that this Court entered judgment herein for him as against the Respondent in the sum of KSHS. 4, 467, 360.70 together with interest. Therefore, the judgement provided a figure capable of being ascertained. The figure should have been used to determine the instruction fees in the Bill of Costs.
5. On 14th March 2023, the Deputy Registrar of this Court, Noella Kyanya delivered a ruling on the Bill of Costs, awarding the Claimant party and party costs of KSHS. 2, 753,940.
6. In the ruling, the Honourable Deputy Registrar correctly tabulated the party and party costs but enhanced the instructions fees to KSHS 2,000,000 without sufficient justification. As a result, the Claimant was awarded an excessive amount, which was contrary to the provisions of the Advocates Remuneration Order.
7. The amount that the Honourable Deputy Registrar awarded as instructions fees was based on an error of principle, the same is manifestly high and a great injustice to the Respondent.

The Claimant Resists.

8. The Claimant contended that the Respondent's application is bad in law and incurably defective as it offends the mandatory provisions of Rule 11 of the Advocates Remuneration Order, which requires the Applicant to, within 14 days after the decision of the taxing officer, give notice in writing to the taxing officer of the items of taxation to which it objects.
9. Contrary to what the law requires, the Respondent/Applicant hasn't to date filed an objection to the ruling on the taxation.
10. Further, the Respondent didn't request the taxing officer to give reasons regarding the taxed items to enable the applicant to invoke the jurisdiction of this court to consider the items objected to and render itself appropriately.
11. Lastly, the Respondent/Applicant has irregularly approached this court, through a general Chamber Summons instead of proper Reference to the Judge in Chambers.

Analysis and Determination.

12. I have carefully considered the application, the grounds upon which it is anchored, the affidavit in support thereof, the grounds of opposition by the Claimant, and the submissions by the parties, and distil a single prime issue for determination, is the Respondent's application merited?
13. Before I delve further into interrogating whether or not the application is merited, it is imperative to state that the Claimant attacks the application solely on the manner it has been presented to the court. Unarguably, the attack is jurisdictional. As such, I am bound to first render myself on the matters raised by the Claimant as I shall shortly, hereinafter.
14. The Claimant's Counsel submitted that Rule 11 of the Advocates Remuneration Order, provides an elaborate procedure which must be adhered to by a person challenging a decision on a Bill of Costs. According to him, the procedure wasn't followed by the Respondent, thus rendering the application incurably defective. To support this point, Counsel relied on the case of Elijah Njuguna Njoki v Peter Muriu Njuguna & 4 others [2021] eKLR.



15. The Respondent argues that the pre-reference steps skipped don't render the application incurably defective to attract striking out of the same as suggested by the Claimant. To agree with the position of the Claimant, and strike out the matter, shall amount to unduly relying on technicalities to its prejudice. The Honourable Deputy Registrar in her ruling clearly put forth the reasons for her decision, there couldn't be a reason for her to re-draft the ruling. To support this point, Counsel relied on the case of *Evans Thiga Gaturu Advocate vs. Kenya Commercial Bank [2012] eKLR*. Assuming that there was a misstep by the reasons not being resupplied through another document outside of the ruling, Article 159 of *the Constitution* will aid the application and enable it to survive.
16. No doubt, Rule 11 of the Advocates Remuneration Order sets out a detailed procedure for a person[s] to follow in assailing a decision of a Taxing Officer, on matters of, party and party costs, Client-Advocate and Advocate- Client costs. The procedure is segmented into pre-reference and post-reference, procedural steps.
17. The Rule provides;
- “1. Should a 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 14 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 objection.
 3. Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subsection [2] may, with 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 taking of any steps; application for such an order may be made by chamber summons upon giving to every interested party 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.”
18. The Claimant contended that the notice contemplated in subparagraph [1] above, was not issued by the Respondent. The Respondent/Applicant on the other hand submits that he issued the notice under a letter 14th March, 2023. This Court notes that the alleged letter is neither on record nor an annexure to the replying affidavit. As a result, the only safe conclusion to be made is that none was filed.
19. In my view, the notice abovementioned is intended to enable the person[s] intending to challenge the decision of the Taxing Officer to gather material for the preparation and presentation of the reference. Largely, the step of issuing the notice is for the benefit of the person rather than the adversary. To the extent, therefore, that if the aggrieved person[s] is possessed of the material necessary to enable him or her to present the chamber summons application and indeed files the same within the requisite period, it will be undue reliance on procedural technicalities to dismiss the application on account that the notice was issued. Such will not align well with the command in Article 159 of *the Constitution*.



20. This Court notes that the Learned Taxing Officer issued a detailed typed ruling on the 14th of March 2023. The reasons for the decision on the particular items of the Party and Party Bill of Costs were clearly spelt out. One could then wonder what the essence of a requirement that the Taxing Officer issues reasons for the taxation on a different document outside of the ruling, could be. In my view, such a demand could only help a waste of the judiciary's precious time and militate against an expeditious disposal of the controversies.
21. Having said this, it becomes imperative to state that I agree fully with Justice Odunga's [as he then was] in the case of *Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited* [2012] eKLR, thus,

“That brings us to the question of what happens, as the client alleges in this case, where no reasons are given. First, and foremost, the above provisions presuppose that in delivering their decisions on taxation, the taxing officers only pronounce the results of taxation without the reasons behind them. In most cases, the court is aware that, taxing officers, in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons, thereafter. In such circumstances, it would be foolhardy to expect the taxing officer to redraft another “ruling” containing reasons. I do not see the reason why the taxing officer cannot be at the time of making his decision to do so together with the reasons therefor.”
22. As such, I am not persuaded by the Claimant's argument that the instant application is a fit candidate for striking out on the account that it affronts the stipulations of Rule 11 of the Advocates Remuneration Order.
23. In the Judgment of this Court of 22nd September 2022, I awarded the Claimant a specific amount. In my view, for purposes of taxation of party and party costs, the ascertainable amount per Schedule 6 paragraph 1[b], became the value of the subject matter. It cannot be seen in any other manner. I note that the Learned Taxing Officer correctly appreciated this position in paragraph three of her ruling before she inexplicably, and even after concluding that this court didn't certify the matter as complex, veered off into awarding costs that were not in line with the stipulations of the schedule.
24. The matter before this wasn't complex. I see no reason why the Learned Taxing Officer, could enhance instruction fees from the stipulated KSHS. 189,347.21 to 2,000, 000. This is a matter where the Taxing officer's discretion was not applied judiciously. The justice of this matter demands that this Court interferes with the taxation, therefore.
25. By reason of the premises, the Taxing Master's taxation on item 1 of the Party and Party Bill of Costs is hereby set aside and in place thereof the figure of KSHS. 189, 347. 21 allowed. The getting-up fee which is allowable under the schedule, often correlates with instructions fees and, consequently, having disturbed the figure that was awarded as instruction fees, the amounts taxed for getting-up fees must be disturbed too. The amount of KSHS. 700,000 is set aside, and in place thereof KSHS. 63,115.74 allowed.
26. In the upshot, the Respondent's application is allowed in the terms foregoing. Each Party is to bear its own cost.
27. Orders accordingly.

READ SIGNED AND DELIVERED THIS 31ST DAY OF OCTOBER 2024.

OCHARO KEBIRA

JUDGE



In the Presence of

Mr. Kisaka for the Claimant.

