



**Oseko Ouma Advocates LLP v Osman & 628 others (Miscellaneous Application E264 of 2023) [2024] KEELRC 2420 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2420 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E264 OF 2023**

**L NDOLO, J**

**OCTOBER 3, 2024**

**BEING AND ADVOCATE-CLIENT BILL OF COSTS ARISING FROM  
ELRC CAUSE NO 59 OF 2018 (FORMERLY HCCC NO 334 OF 2009**

**BETWEEN**

**OSEKO OUMA ADVOCATES LLP ..... ADVOCATE**

**AND**

**ABDALLA OSMAN & 628 OTHERS ..... CLIENT**

**RULING**

1. By a Notice of Motion dated 20<sup>th</sup> March 2024, the Clients ask the Court to strike out the Advocate-Client Bill of Costs dated 10<sup>th</sup> November 2023 filed by the firm of Oseko & Ouma Advocates.
2. The application is supported by an affidavit sworn by Grace Njeri Ndirango and is premised on the following grounds:
  - a. That in the year 2005, the Clients instructed the firm of Oseko and Company Advocates, to pursue their claim for unpaid pension against Standard Chartered Bank Kenya Limited, Standard Chartered Kenya Pension Fund and Standard Chartered Kenya Staff Benefits Scheme 2006;
  - b. That following discussions between the Clients and the Advocates, the parties reduced their deliberations into writing vide letter dated 12<sup>th</sup> August 2005, by which the Advocates accepted to act for the Clients on condition that each Client pays a deposit of Kshs. 100,000 to cover instruction fees and disbursements;
  - c. That it was further agreed that on completion of the case, the Advocates would charge 10% of the damages awarded;



- d. That it was clear that each Client would meet their own fees and each Client paid the agreed sum in different instalments;
  - e. That following the demise of Mr. Mathew Oseko, Advocate on 29<sup>th</sup> June 2015, the law firm transitioned to Oseko & Ouma Advocates, upon which the Clients were asked to pay the balances on instruction fees based on the initial agreement of 12<sup>th</sup> August 2005;
  - f. That upon transfer of the case to this Court, the matter was referred to the CEO, Retirement Benefits Authority;
  - g. That the matter was canvassed before the CEO, Retirement Benefits Authority, who dismissed it vide a decision issued on 22<sup>nd</sup> April 2021;
  - h. That by this time, most of the Clients had settled their portions of instruction fees and disbursements;
  - i. That no damages were awarded to the Clients meaning that there was no basis for further fees;
  - j. That since the fee chargeable was based on agreement of the parties, it falls under Section 45 of the *Advocates Act*, ousting the jurisdiction of the Taxing Master;
  - k. That the fee was charged on an individual basis and all the 629 pensioners complied and made payments in full or to some extent. The Clients have not been given credit for the instruction fees and disbursements paid by them;
  - l. That the Bill of Costs as drawn is bad in law, incompetent, unreasonable and incapable of execution;
  - m. That the Court, having downed its tools on the basis of the doctrine of exhaustion, lacks the requisite jurisdiction to entertain a Bill of Costs arising out of a matter referred to the CEO, Retirement Benefits Authority;
  - n. That the application has been brought timeously without unreasonable delay;
  - o. That the Advocate will not suffer any prejudice if the application is allowed and the Bill of Costs struck out;
  - p. That it is in the interest of justice that the orders sought are granted.
3. The Advocate opposes the application by a replying affidavit sworn by Christine Ouma Oseko on 19<sup>th</sup> April 2024, in which she depones as follows:
- a. That it is undisputed that the Clients instructed the law firm of Oseko & Company Advocates, to represent their interests in HCCC No. 334 of 2009;
  - b. That it is undisputed that the said law firm was a sole proprietorship which ceased operations after the demise of the founder and owner, Mr. Mathew Oseko on 29<sup>th</sup> June 2015;
  - c. That the present firm is a limited liability partnership that was established on 2<sup>nd</sup> March 2016;
  - d. That the Clients instructed the present firm to take over from their former Advocate and a Notice of Change of Advocates was filed on 5<sup>th</sup> July 2016;
  - e. That the present firm represented the Clients' interests from July 2016 to 12<sup>th</sup> November 2018, both at the High Court and before this Court;



- f. That there has never been any retainer agreement between the present firm being Oseko & Ouma Advocates LLP and the Clients;
  - g. That the present Motion is misconceived, frivolous, vexatious and a total abuse of the court process;
  - h. That the application flies in the face of Section 45 of the [Advocates Act](#) as there is no retainer agreement that has been produced before the Court;
  - i. That this Court has jurisdiction to tax the Bill of Costs dated 10<sup>th</sup> November 2023;
  - j. That the Clients have not produced any evidence to show payment of any fees on account.
4. In her further affidavit sworn on 17<sup>th</sup> May 2024, Grace Njeri Ndirango depones that the Clients did not issue any instructions to the firm of Oseko & Ouma Advocates LLP to act on their behalf. She adds that the Clients were not made aware that the firm of Oseko & Co. Advocates was no longer acting for them.
  5. The major ground upon which the Clients object to taxation of the Bill of Costs dated 10<sup>th</sup> November 2023 is that jurisdiction of the Taxing Master has been ousted by Section 45 of the [Advocates Act](#).
  6. Section 45(6) of the [Advocates Act](#) provides as follows:
    - (6) Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subjected to taxation nor to section 48.
  7. In urging their case, the Clients submit that the present firm of Advocates is bound by a previous agreement on fees, executed between the Clients and the firm of Oseko & Co. Advocates. In this regard, the Clients cite correspondence from the firm of Oseko & Ouma Advocates LLP asking some of the Clients to settle instruction fees based on the aforesaid agreement dated 12<sup>th</sup> August 2005. The Clients deny having issued fresh instructions to Oseko & Ouma Advocates LLP.
  8. While the firm of Oseko & Ouma Advocates LLP disowns the agreement on fees dated 12<sup>th</sup> August 2005, it has not produced any evidence of fresh instructions from the Clients. It is therefore not farfetched to conclude that the only explanation as to how the present firm came on record for the Clients is by a takeover of the agreement on fees dated 12<sup>th</sup> August 2005.
  9. For this reason, I agree with the Clients that the Bill of Costs dated 10<sup>th</sup> November 2023 is incompetent by dint of Section 45(6) of the [Advocates Act](#).
  10. The result is that the Clients' Notice of Motion dated 20<sup>th</sup> March 2024 is allowed and the subject Bill of Costs dated 10<sup>th</sup> November 2023 is struck out.
  11. Each party will bear their own costs.
  12. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Wanyonyi for the Clients

Ms. Omutimba for the Advocate

