



**Kimweli & another v Sameer Agriculture & Livestock Limited (Cause 1832 of 2015) [2024] KEELRC 2719 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2719 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1832 OF 2015  
L NDOLO, J  
NOVEMBER 7, 2024**

**BETWEEN**

**PIUS MUINDI KIMWELI ..... 1<sup>ST</sup> CLAIMANT**

**PATRICK MWANZIA ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**SAMEER AGRICULTURE & LIVESTOCK LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the Chamber Summons dated 26<sup>th</sup> April 2024, by which the Respondent seeks the following orders:
  - a. An order to set vacate and set aside the ruling of Hon D.O Mbeja dated 19<sup>th</sup> April 2024, allowing the Claimants' Party and Party Bill of Costs dated 25<sup>th</sup> July 2022;
  - b. A finding that the Taxing Officer erred in law in taxing and allowing the Claimants' Bill of Costs dated 25<sup>th</sup> July 2022 and in failing to consider the Respondent's submissions, replying affidavit and grounds of opposition;
  - c. An order dismissing the Claimants' Party and Party Bill of Costs dated 25<sup>th</sup> July 2022.
2. In the alternative, the Respondent asks the Court to tax the Claimants' Party and Party Bill of Costs dated 25<sup>th</sup> July 2022 at Nil.
3. The application is supported by an affidavit sworn by the Respondent's Legal Officer, Paul Maina and is based on the grounds that:
  - a. On 19<sup>th</sup> April 2024, Hon D.O Mbeja delivered a ruling allowing the Claimants' Party and Party Bill of Costs dated 25<sup>th</sup> July 2022 at Kshs. 168,610;



- b. The Taxing Officer erred in law in taxing the Bill of Costs dated 25<sup>th</sup> July 2022, despite the weighty objections and evidence thereof raised in the Respondent’s submissions, replying affidavit and grounds of opposition;
  - c. The Taxing Officer, while injudiciously applying his discretion, erred in principle and in fact by proceeding to tax the Bill of Costs dated 25<sup>th</sup> July 2022, whereas the services particularised in the said Bill of Costs were undertaken by the Claimants’ Advocate when he did not hold a valid practicing certificate;
  - d. The Taxing Officer misapplied Article 159(2)(d) of *the Constitution*, Section 34B of the *Advocates Act* and binding judicial precedents, thereby arriving at an erroneous conclusion;
  - e. The Taxing Officer disregarded the provisions of Sections 9, 31 and 34 of the *Advocates Act*, the Advocates Remuneration Order and binding judicial pronouncements relevant to these proceedings;
  - f. The Taxing Officer totally ignored and failed to consider the Respondent’s weighty objections and evidence thereof raised in its replying affidavit and grounds of opposition, thereby rendering an erroneous finding;
  - g. The ruling did not address the issue of the Claimants’ Advocate’s failure to hold a valid practicing certificate, when taking instructions from the Claimants and when rendering services as an Advocate, contrary to Sections 9 and 34 of the *Advocates Act*;
  - h. The Taxing Officer erred in law and principle in allowing the Claimant’s Party and Party Bill of Costs dated 25<sup>th</sup> July 2022, without strict adherence to the provisions of the *Advocates Act* and prevailing judicial pronouncements;
  - i. Despite being served with the Respondent’s replying affidavit and grounds of opposition, the Claimants’ Advocate did not offer any response to challenge the averments and evidence therein and did not file any submissions in relation to the issues raised;
  - j. The Respondent’s averments and evidence therefore stood uncontested and uncontroverted;
  - k. It is in the interest of justice that the ruling delivered on 19<sup>th</sup> April 2024 by Hon D.O Mbeja, be set aside and the Claimants’ Party and Party Bill of Costs dated 25<sup>th</sup> July 2022 be dismissed with costs or in the alternative, the Court proceeds to tax it in accordance with the law.
4. The Respondent’s objection to the ruling delivered by Hon D.O Mbeja is based on the assertion that at the time the primary suit was filed and prosecuted, the Advocate on record for the Claimants did not hold a valid practicing certificate. The Respondent therefore argues that the Advocate was an unqualified person who could not bring a Party and Party Bill of Costs.
  5. In disagreeing with the Respondent and finding for the Claimants, the Taxing Officer analysed the relevant provisions in the *Advocates Act* being; Section 27 on the effect of suspension of an advocate, Section 31 which precludes an unqualified person from acting as an advocate and Section 34 which bars an unqualified person from drawing, taking instructions or filing pleadings.
  6. The Taxing Officer then relied on the Supreme Court decision in *National Bank of Kenya v Anaj Warehousing Limited* [2015] eKLR where it was held that it would be a travesty of justice to strike out a party’s documents merely because they have been drawn or filed by an advocate who has not taken out a practicing certificate.



7. The Taxing Officer drew the following conclusion on this issue:

“The effect of that decision, necessitated an amendment to the *Advocates Act* which saw the introduction of Section 34B which now provides that the validity of any legal documents drawn or prepared by an advocate who has not taken out a practicing certificate shall not be affected by the failure to obtain a practicing certificate.”

8. With the foregoing analysis of both binding jurisprudence and express statutory provisions, I am unable to find fault with the decision by the Taxing Officer. To my mind, the Bill of Costs dated 25<sup>th</sup> July 2022 falls within the definition of a legal document as contemplated by Section 34B of the *Advocates Act*.

9. There is therefore no merit in the Respondent’s Chamber Summons dated 26<sup>th</sup> April 2024, which I proceed to dismiss with no order for costs.

10. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER 2024**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Maina for the Applicant

No appearance for the Respondent

