



REPUBLIC OF KENYA



Mauwa & Co Advocates v JRS Group Limited (Miscellaneous Application E083 of 2021) [2023] KEELRC 86 (KLR) (25 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 86 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E083 OF 2021**

**S RADIDO, J
JANUARY 25, 2023**

BETWEEN

MAUWA & CO ADVOCATES ADVOCATE

AND

JRS GROUP LIMITED RESPONDENT

RULING

1. Mauwa & Co Advocates (the advocate) were retained by JRS Group Ltd (the respondent) to defend it, and after the finalisation of the cause, the advocate filed a bill of costs which was taxed at kshs 265,550/10 on September 20, 2022.
2. The respondent was not satisfied, and on October 12, 2022, it filed a summons seeking orders:
 - (a) That the advocate – client bill of costs dated November 11, 2021 and taxed on September 20, 2022 by the honourable Beryl Omollo Magistrate be recommitted before the honourable judge on a reference on an objection by the applicant and the same be retaxed on the items mentioned on the grounds here below.
 - (b) That the cost of this application be in the cause.
3. The grounds in support of the summons were that the taxing officer had erred in law in taxing items 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24 and 25.
4. The respondent further asserted that some of the items were overtaxed.
5. The advocate filed a replying affidavit in opposition to the application on November 9, 2022, wherein it was deposed that the application was time time-barred was filed before obtaining leave and that the taxing officer rightly and in accordance with the rule 6 of the *Advocates Remuneration Order* taxed off the items complained about.



6. The respondent filed its submissions on 1 December 2022.
7. It asserted therein that it filed an objection to the taxation/sought for reasons for the taxation on September 21,2022, and that the taxing officer never bothered to respond, thus forcing it to file the reference on October 12, 2022.
8. The authority of *Muriu Mungai & CO Advocates v New Kenya Cooperative Creameries Ltd* (2008) eKLR was cited.
9. The respondent also contended that the taxing officer committed an error of principle and abused her discretion because there had been no denial of liability of some of the items yet she taxed the items as if there had been such denial.
10. Further, the respondent argued that under schedule 6, there was a composite fee for all letters and that it was erroneous for the taxing officer to tax each letter separately.
11. It was also argued that the taxing officer allowed for fees for service when there was no evidence of service and that the taxing officer did not give reasons for disregarding schedule 6 of the *Advocates Remuneration Order*.
12. The Advocate filed his submissions on December 8, 2022 wherein he asserted that since the ruling on the taxation was on September 20, 2022, and the taxing officer informed the respondent that a typed copy of the ruling was already in the file, the reference should have been filed within 14 days, but it was filed 23 days later on October 12, 2022, contrary to the prescription of paragraph 11(2) of the *Advocates Remuneration Order*.
13. The advocate also maintained that the reasons for the taxation had been given in the ruling of September 20, 2022, and that there was no reason for the Respondent to seek further or other reasons. The advocate drew the attention of the court to Ahmednasir *Abdikadir & Co Advocates v National Bank of Kenya Ltd* (2)(2006) 1 EA 5.
14. In the said decision, the High Court observed that where the reasons for taxation had been set out in the taxation ruling, then there was no need for the dissatisfied party to formally seek further reasons.
15. The advocate reiterated that the taxing officer had exercised her discretion correctly.
16. Paragraph 11 of the *Advocates Remuneration Order* provides:
 - 11 objection to decision on taxation and appeal to Court of Appeal
 - (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 parties concerned, setting out the grounds of his objection.
17. The court has looked at the record/notes kept by the taxing officer. There is no written notice of an objection to any of the items taxed. The record does also not reflect whether an oral objection was raised immediately after the Ruling on the taxation.
18. The ruling on the taxation indicates that it was delivered on September 20, 2022. The respondent consequently, had 14 days to file a Reference.



19. The reference was not lodged with the court within 14 days. It was filed after the lapse of the 14 days without any leave.
20. Although the respondent asserted that it sought for the reasons for the taxation through a letter dated 21 September 2022, a copy of the letter is not in the court file. A copy was also not attached to the supporting affidavit.
21. The chamber summons is dismissed with costs.

DELIVERED VIRTUALLY AND DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF JANUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For advocate Mauwa & Co. Advocates

For Respondent Juliet Dima & Associates Advocates

Court Assistant Chrispo Aura

