



Okong'o Wandago & Co Advocates v Kisumu County Assembly Service Board (Miscellaneous Application 22 of 2018) [2023] KEELRC 506 (KLR) (1 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 506 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION 22 OF 2018**

S RADIDO, J

MARCH 1, 2023

**IN THE MATTER OF A REFERENCE AGAINST THE DECISION OF
A TAXING OFFICER PURSUANT TO PARAGRAPH 11(2) OF THE
ADVOCATES REMUNERATION (AMENDMENT) ORDER, 2014**

BETWEEN

OKONG'O WANDAGO & CO ADVOCATES APPLICANT

AND

KISUMU COUNTY ASSEMBLY SERVICE BOARD RESPONDENT

RULING

1. The firm of Okong'o Wandago & Co. Advocates (the advocate) were retained by the County Assembly Service Board, Kisumu (the Board) to represent it in Kisumu ELRC Petition No. 297 of 2014, County Assembly Service Board & Ar v County Assembly of Kisumu & Ors.
2. Upon conclusion of the Petition, the advocate filed an advocate/client bill of costs on 4 July 2018.
3. The bill of costs was taxed on 28 August 2018, in the sum of Kshs 4,293,007/40. During the taxation, the advocate brought to the attention of the Taxing Officer that party-to-party costs had been taxed at Kshs 5,200,000/-.
4. The advocate was dissatisfied with the taxation, and it lodged an objection on 31 August 2018.
5. The primary ground in support of the objection was that the party to party bill of costs had been taxed at Kshs 5,200,000/- on 26 February 2016, but the Taxing Officer had failed to consider it during the taxation of the advocate/client bill of costs as required by schedule 6B of the Advocates Remuneration (Amendment) Order, 2014.
6. The advocate requested the Taxing Officer to give reasons for the taxation in order to enable him file a Reference.



7. The Taxing Officer did not give the reasons for the taxation and the advocate sent reminders on 29 April 2019 and 6 May 2019.
8. Despite not getting the reasons, the advocate moved the Court on 28 November 2019, to have the Certificate of Costs converted into a judgment of the Court for purposes of execution.
9. The Court, by consent of the parties, granted the Motion on 24 February 2020 and the advocate moved to execute, prompting the Board to make part payment.
10. On 8 December 2020, the advocate sent another reminder to the Taxing Officer to give reasons for the taxation of the advocate/client bill of costs.
11. The parties entered into another consent on 28 September 2022, for the payment of the balance of the taxed costs and the Court adopted the consent on 29 September 2022.
12. On 8 December 2022, the advocate, again requested the Taxing Officer to give reasons for the taxation and the Taxing Officer responded on 15 December 2022, indicating that the reasons for the taxation had been given in the Ruling of 28 August 2018.
13. Consequently, the advocate filed a Reference on 23 December 2022, seeking orders:
 - (1) ...
 - (2) The Court be pleased to review the Taxing Officer's decision dated 28th August 2018 by taking into account the sum of Kshs 4,293,007/40 awarded by the Taxing Master, re-tax the bill of costs dated 4th July 2018 afresh and enhance the amount awarded by the Taxing Officer by an additional sum of Kshs 3,506,992/60 to the applicant as applicable fees due to the applicant, on advocate/client basis, taking into account the party to party costs in Kisumu ELRC Petition no. 297 of 2014.
 - (3) A revise and resultant Certificate of Costs incorporating the amount awarded upon the Reference be issued.
 - (4) Judgment be entered for the applicant for the said sum of Kshs 3,506,992/60 in terms of section 51(2) of the *Advocates Act*.
 - (5) Interest on the said sum shown in the revised Certificate of Costs in prayer 3 above be awarded to the applicant and does accrue at the rate of 14% per annum with effect from 1st January 2016 until payment in full.
 - (6) The costs of this application be awarded to the advocate/applicant and the same be fixed and determined by this Court.
14. The Board filed Grounds of Opposition to the Reference on 16 January 2023, and the advocate filed his submissions on 25 January 2023.
15. The Court took oral submissions on 26 January 2023.
16. The key to start unravelling the Reference is an interpretation and application of Schedule 6B of the *Advocates Remuneration (Amendment) Order*, 2014.
17. It provides:

B—Advocate and Client Costs

As between advocate and client the minimum fee shall be —



- (a) the fees prescribed in A above, increased by 50%; or
 - (b) the fees ordered by the court, increased by 50%; or
 - (c) the fees agreed by the parties under paragraph 57 of this order increased by 50%; as the case may be, such increase to include all proper attendances on the client and all necessary correspondences.
18. The Court has keenly perused the record. A copy of the taxation Ruling is not on record (either handwritten or typed). The advocate had contended that a copy of the Ruling was not provided upon request.
 19. The Taxing Officer, therefore, fell into an error of law when she neglected to provide the reasons for the taxation despite several reminders by the advocate.
 20. Nevertheless, it is not in dispute that the Taxing Officer had taxed the party to party bill of costs in 2016, in the sum of Kshs 5,200,000/-.
 21. During the taxation of the advocate/client bill in 2018, the advocate placed before the Taxing Officer a copy of the party-to-party Certificate of Costs.
 22. The question, therefore, begs, of what import or legal significance was the party-to-party Certificate of Costs in the taxation of the advocate/client bill of costs.
 23. The Court of Appeal answered the question in *Central Bank of Kenya v Makhecha & Co. Advocates* [2019] eKLR wherein it held:

It seems to us quite clear that where party and party costs have been taxed and agreed, then, unless there be an agreement as to fees between the client and the advocate, the advocate is entitled, as of right, by dint of Schedule VIB of the Remuneration Order, to the party to party costs plus half of the same. It is a matter of arithmetic, requiring no exercise of discretion on the part of the taxing officer.
 24. Similar interpretations were taken by the Courts in *Otieno Ragot & Co. Advocates v Kenya Airports Authority* [2021] eKLR and *JM Njenga & Co. Advocates v Kenya Tea Development Agency Ltd* [2011] eKLR.
 25. Confronted with the party-to-party Certificate of Costs of 26 February 2018, the Taxing Officer had no discretion, but to use the Certificate of Costs as the primary yardstick for assessing or taxing the advocate/client bill of costs.
 26. The duty of the Taxing Officer was to increase the party-to-party taxed costs by 50% to arrive at the fees due on account of advocate/client costs. The advocate/client bill of costs should, therefore, have been allowed/taxed at Kshs 7,800,000/- instead of Kshs 4,293,007/40.
 27. The Taxing Officer erred in law by failing to abide by the demand of Schedule 6B.
 28. The Court, therefore allows the Reference and reviews and sets aside the Ruling and Certificate of Costs.

Conclusion and Orders

29. In line with Schedule 6B, the Court allows the advocate/client an additional sum of Kshs 3,506,992/60 being 50% increase on the party-to-party costs as advocate/client costs.
30. The advocate also requested to be awarded costs at 14% per annum from 1 January 2016.



31. The error during the taxation was on the part of the Taxing Officer, and the Court, therefore, declines to award interest or further costs, seeing that the costs must be met from public funds.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF MARCH 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For applicant Okong'o Wandago & Co. Advocates

For Respondents

Court Assistant Chrispo Aura

