



Bruce Odeny & Co. Advocates v Scottish Tartan Hotel Ltd & another (Miscellaneous Application E087 of 2021) [2023] KEELRC 884 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 884 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E087 OF 2021**

**S RADIDO, J
APRIL 19, 2023**

BETWEEN

BRUCE ODENY & CO. ADVOCATES APPLICANT

AND

SCOTTISH TARTAN HOTEL LTD 1ST RESPONDENT

WILLIAM ROMAN MCTOUGH 2ND RESPONDENT

RULING

1. The firm of Bruce Odeny & Co. Advocates (the advocate) represented Scottish Tartan Hotels Ltd and William Roman McTough (the Respondents) and had the advocate/client bill of costs taxed on 30 August 2022 at Kshs 234,008/-.
2. A Certificate of Taxation was granted on 30 August 2022 and issued on 5 December 2022.
3. On 19 September 2022, the advocate moved the Court to convert the Certificate of Taxation into a judgment of the Court. The Motion was listed for hearing on 6 October 2022.
4. On 20 September 2022, the Respondents filed their own Motion seeking orders:
 - (1) That there be a stay of execution of the Ruling on taxation dated 30th August 2022 certifying the costs due to the applicant from the Respondents at Kshs 234,008/- pending the hearing of the Reference.
 - (2) That this Reference be deemed to have been duly lodged within the time prescribed.
 - (3) That the Reference be heard and determined expeditiously.
 - (4) That the Taxation Ruling dated 30th August 2022 delivered in Miscellaneous Civil Application No. E087 of 2021 be set aside and or varied.



- (5) That the Bill of Costs dated 30th November 2021 in its entirety be taxed before another Taxing Officer or this Honourable Court.
- (6) The costs of this application be provided for.
5. When the Respondents application was placed before the Court, it granted an interim stay of execution on condition that the taxed costs be deposited with the Court before end of 23 September 2022.
6. When the advocates and Respondents' Motions came up on 6 October 2022, the parties informed the Court that they were negotiating. The Court directed the file(s) be mentioned on 23 January 2023.
7. On 23 January 2023, it turned out that the Respondents had not responded to the advocate's application seeking to convert the Certificate of Costs into a judgment, and the Court allowed the Motion.
8. The Respondents then prayed for 14 days to settle the costs and the Court set mention for 14 February 2023 to confirm settlement.
9. The Respondents filed submissions in support of their Motion on 17 February 2023.
10. There was no settlement (the Respondents informed the Court from the bar that the advocate had been awarded costs in High Court Commercial Case No. E005 of 2022, William Roman McTough v Bruce Odeny & Co. Advocates, and the same had been paid).
11. The Court then directed that the Respondents' Motion be heard on 20 February 2023. On 20 February 2023, the advocate requested to be allowed to file written submissions, and the Court directed him to file and serve the submissions within 7 days with Ruling scheduled for today.
12. The advocate filed the submissions on 27 February 2023 (the submissions related to the advocate's application to convert the certificate of costs into a judgment of the Court, an application the Court determined on 23 January 2023).
13. The Court has considered the Respondents' Motion filed on 20 September 2022, the supporting affidavit, submissions and the record.

Stay of Execution

14. The Court granted the Respondents an interim stay of execution on a condition. The Respondents did not comply with the condition.
15. The record shows that the advocate and the Respondents entered into a consent before the High Court on or around 18 October 2022, which consent appeared to have compromised all fees due from the Respondents to the advocate.
16. The consent had a rider that the Respondents were to pay the advocate a global sum of Kshs 5,000,000/- within 90 days.
17. The 90 days should have lapsed on or before 18 January 2023.
18. The Respondents did not place before the Court any evidence that they had made payment of Kshs 5,000,000/- within the 90 days.
19. The Court, therefore, declines to confirm or extend the interim stay.



The Reference

20. On the merits of the Reference, the Respondents asserted that the Taxing Officer went outside the guidelines set out in the Advocates Remuneration (Amendment) Order, failed to correctly apply the law to the facts and that the advocate had not demonstrated that he offered legal services.
21. The Respondents have not disclosed to the Court the particular guidelines the Taxing Officer did not consider to enable the Court determine whether she went outside the guidelines.
22. The Respondents have also not disclosed the details of the law which the Taxing Officer failed to apply to the facts of the case.
23. On the question of legal services, the Court notes that the advocate set out in the Bill of Costs, each item of services rendered and the Respondents had the opportunity to respond and submit on each item of services rendered during the taxation.
24. The Respondents have not demonstrated that in exercising her discretion while taxing-off each of the items, the Taxing Officer did not apply her mind correctly to the applicable principles.

Conclusion and Orders

25. The Court finds no merit in the Respondents' Motion filed in Court on 20 September 2022. It is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 19TH DAY OF APRIL 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For advocate Ms Mwangi instructed by Bruce Odeny & Co. Advocates

For Respondents Mr Kasamani instructed by Kasamani & Associates

Court Assistant Chrispo Aura

