



**Hakika Transport Services Limited v Isaac Onyango & Company Advocates (Miscellaneous Application E022 of 2023) [2023] KEELRC 2343 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2343 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**MISCELLANEOUS APPLICATION E022 OF 2023**

**M MBARŪ, J**

**SEPTEMBER 28, 2023**

**IN THE MATTER OF: MOMBASA ELRC NO. E066 OF 2022 – ISAAC ONYANGO & COMPANY ADVOCATES V HAKIKA TRANSPORT SERVICES LIMITED**

**BETWEEN**

**HAKIKA TRANSPORT SERVICES LIMITED ..... APPLICANT**

**AND**

**ISAAC ONYANGO & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. The applicant, Hakika Transport Services Limited filed application dated 6 June 2023 under the provisions of rule 11(1) and (2) of the [Advocates Remuneration Order](#) seeking for orders that;
  1. The learned taxing master erred in holding Part B of the applicable [Advocates Remuneration Order](#) relevant, yet, failing to consider the award in the claim, vide the consent dated 11 August 2021 was Kshs. 436,400;
  2. The learned taxing master exercised his discretion wrongly in taxing instruction fee as Kshs. 90,000 without any finding/certification from the learned Judge in the judgment that;
    - a. The claim was of a complex nature to justify the use of the upper scale of the schedule 6(1)(a) of the [Advocates \(Remuneration\)\(Amendment\) Order, 2014](#);
    - b. The claim was of great public interest or involved a novel point of law.
  3. The taxing master erred in finding that the Bill was drawn to scale and taxing it as drawn.
  4. The learned taxing master arrived at the wrong conclusion by awarding costs at an aggregate sum of Kshs. 852,762.50.



5. The learned taxing master erred in failing to consider the public policy implications on the sustained practice of law, in awarding the advocates costs disproportionate to the work done.
2. The applicant is seeking that the objections dated 19 May 2023 be set aside and the ruling dated 8 May 2023 on the Advocates Bill of Costs dated 28 September 2022 be confirmed and in the alternative, the court do remit the same before another taxing master.
3. The application is supported by the Affidavit of David Mvoi Wachenje advocate for the applicant.
4. Parties attended and agreed to address the application by way of written submissions.
5. The applicant filed its submissions and supplementary submissions on the grounds that through the reference on taxation and the Bill of Costs dated 28 September 2022, the same should be taxed afresh by a different taxing master as the same at item 1-221 was excessively high and there was error in principle in the taxation. the taxation failed to follow the provisions of law in taxing item 1 being instructions fees in considering that a party and party bill of costs had been taxed and failing to utilise the sum so taxed to arrive at the instruction fee. There is no jurisdiction to increase a bill that is already taxed as held in *Friends Church (Quakers) Nairobi Yearly meeting v Onsongo & Co. Advocates*, Misc. Civil Application No. 124 of 2019 [Kisumu High Court].
6. Item No. 1 on instructions fees ought to be based on amount actually awarded being Kshs. 264,000 based on Schedule 6(1)(a) of the Advocates Remuneration Order. Under clause 2, it sets the fees at Kshs. 45,000 on the lower scale and the taxed sum of Kshs. 90,000 was excessive and erroneous.
7. Items 2-5 of the bill of costs would then reduce based on calculation of the instructions fees.
8. Perusals should be based on the Remuneration Orders which was ignored by the taxing master. On drawings, Schedule 6 of the Remuneration Order was not applied leading to erroneous figures in costs. On copies, Schedule 7 apply Ksh.25 per folio and attendance should be Ksh.600 per quarter hour while service charges should be at Kshs. 1,400 for a 3 kilometres radius.
9. A fresh taxation should address the errors.
10. The respondent submitted that under rule 11 of the *Advocates Remuneration Order*, the advocates bill of costs dated 28 September 2022 as taxed in Mombasa Misc. Civil Application ELRC No. E066 of 2022, the bill was drawn for Kshs. 852,762.50 and in a ruling dated 13 December 2022 the bill was approved as filed. The applicant is challenging all items taxed.
11. Under rule 11(1) and (2) of the *Advocates Remuneration Order*, the applicant ought to file a reference as held in *Kipkorir, Titoo & Ikiara Advocates v Deposit Protection Fund Board* [2005] eKLR and *Machira & Co. Advocates v Arthur K. Magugu & another* CA 199/2002 [2012] eKLR. The principle is to make a reference from the ruling of the taxing master as a first appeal and failure to avail the decision lading to the reference renders the application herein fatal.
12. Rather than present the challenge to the award/ruling in the cause in which the award was made, the applicant has filed a separate cause separate from Misc. ELRC No. E066 of 2022 which is not before the court and which is meant to deliberately mislead the court.
13. Whereas the instant application by the applicant is premised under the provisions of rule 11(1) and (2) of the *Advocates Remuneration Order*, such Rules requires an applicant to;
  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 the parties concerned, setting out the grounds of his objection.
  - (3) ...
14. The subject decision leading to a reference and the reasons thereof must form the basis for an application as herein filed by the applicant. Without the ruling of the taxing master, going through the various items as taxed by the taxing master at this stage is purely premature and without context.
  15. A reference properly so, ought to give this court a background of the matter leading to the filed Bill of Costs and the ruling of the taxing master. Hence, there are no reasons that have been presented from the taxing officer as per the provisions of rule 11(2) of the *Advocates (Remuneration) Order* and upon which, this court can direct and allow the orders sought. see *Ahmednasir Abdikadir & Co. Advocates vs. National Bank of Kenya Limited (2)* [2006] 1 EA 5.
  16. The application herein is supported by the Affidavit of David Mvoi Wachenje advocate. Nothing is attached in form of the Advocate's Bill of Costs dated 28 September 2022 or the ruling dated 8 May 2023. The application is left bare.
  17. Further, the applicant's reliance on Mombasa ELRC No. E066 of 2022 is lost without placing the orders therefrom herein or efforts to link the two matters for the purpose of giving the instant application context.
  18. This being a court of record, before moving court as herein done, the applicant ought to have prepared and filed a proper reference.
  19. The severity of the orders sought cannot issue on the materials before court.
  20. Accordingly, the instant application is hereby struck out. The respondent only filed written submissions and is hereby awarded Kshs. 15,000 all-inclusive in costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF SEPTEMBER 2023.**

**M. MBARŪ**

**JUDGE**

