



Isaac Onyango & Co. Advocates v Hakika Transport Services Limited (Miscellaneous Application E029 of 2022) [2023] KEELRC 2617 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2617 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E029 OF 2022**

**AK NZEI, J
OCTOBER 26, 2023**

BETWEEN

ISAAC ONYANGO & CO. ADVOCATES APPLICANT

AND

HAKIKA TRANSPORT SERVICES LIMITED RESPONDENT

RULING

1. On December 13, 2022, this court's Deputy Registrar (hereinafter referred to as the "Taxing Officer") delivered a Ruling taxing the Applicant's Advocate/Client Bill of Costs dated 13/4/2022 at ksh. 618,075. The taxed costs were subsequently certified vide a certificate of costs issued by the Taxing Officer on December 21, 2022.
2. The court's record shows that on December 16, 2022, the respondent herein, Hakika Transport Services Limited, filed a notice of objection to the decision of the taxing officer. The notice of objection is dated December 16, 2022, and it is worded as follows:-

"Notice of Objection to the Decision of the Taxing Officer

(rule Ii of the Advocates Remuneration Order)

To: The Deputy Registrar

Employment & Labour Relations Court

Mombasa

Take Notice that the client objects to item 1,2,3,4,5,6,-35,26-98,99-100,101-105,106, 107-112, 113-116, 117-168, and the whole of the taxation decision issued on December 13, 2022."



3. The notice of objection was filed contemporaneously with an evenly dated chamber summons application by the objector, Hakika Transport Services Limited, objecting to the Taxing Officer's said decision delivered on 13/12/2022 regarding item nos. 1,2,3,4,5,6-25,26-98,99-100, 101-105,106,107-112,113-116,117-168, and the whole of the taxation decision on the Advocate-Client Bill of Costs dated April 13, 2022, and seeking Orders:-
 - a. that this court allows the objection dated December 16, 2022, sets aside the ruling dated December 13, 2022 and awards such amounts as it deems just,
 - b. that in the alternative, this court remits the Advocate's Bill of Costs dated 13th April 2022 for taxation before another taxing master.
4. On January 26, 2023, Mr. Onyango Advocate informed this Court that the Advocate/Respondent in the application/reference before me would oppose the application and objection dated 16/12/2022 vide their affidavit filed on 8/6/2022 and submissions filed on 11/8/2022 before the Taxing Master, as the Advocate would be advancing the same arguments in opposition to the objection and application herein. Amazing, this is. I say amazing because, in my view, a taxation reference/application to a Judge of this court under rule 11 of the Advocates (Remuneration Order) 1962; where such cause involves an Advocate and his client, should always be brought under a separate Miscellaneous Cause. It should annex copies of all the documents filed before the Taxing Officer and certified copies of proceedings taken before the Taxing Officer and any Certificate of Costs issues by the Taxing Officer.
5. That way, there will be good order, and the legal boundary and import of proceedings before the Taxing Officer and those originated by way of reference to a Judge of this Court will be clearly demarcated; and Counsel will not find it convenient for them to ask this Court to base its decision on submissions which the Taxing Officer considered in the process of making his decision. This kind of improper practice must stop.
6. Back to the reference before me. Rule 11(1) & (2) of the [Advocates \(Remuneration\) Order 1962](#) provides as follows:-
 - “(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.”
7. The foregoing procedure is not shown to have been followed in the present case. The notice of objection was filed together/contemporaneously with the Chamber Summons application to a Judge of this Court. The objection dated December 16, 2022 is not shown to have been placed before the Taxing Officer, and the Taxing Officer is not shown to have recorded and forwarded the reasons for his decision to the objector. This was a substantive flaw and breach of the law and procedure by the Objector/Applicant herein. This court's jurisdiction over matters taxation does not vest unless and until the Taxing Officer has given reasons for his decision in writing to the objector. That is, in my view, the reason why rule 11(2) of the [Advocates \(Remuneration\) Order](#) 1962 gives the Objector a fourteen days' window after receipt of the taxing officer's written reasons to file reference/chamber summons to this court.



8. It is my finding that the chamber summons dated December 16, 2022 is pre-mature, and therefore incompetent; and is hereby dismissed with costs.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH OCTOBER 2023

AGNES KITIKU NZEI

JUDGE

