



Hakika Transport Services Limited v Isaac Onyango & Company Advocates (Miscellaneous Application E024 of 2023) [2023] KEELRC 2829 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2829 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E024 OF 2023**

**AK NZEI, J
NOVEMBER 9, 2023**

BETWEEN
HAKIKA TRANSPORT SERVICES LIMITED APPLICANT
AND
ISAAC ONYANGO & COMPAMY ADVOCATES RESPONDENT

RULING

1. Before me is a Chamber Summons application dated 6/6/2023 and shown to have been filed in this Court on even date. The application is shown to be a taxation reference to this Court arising from the Taxing Officer's taxation decision delivered on 8th May 2023 in Mombasa ELRC Cause No. E067 of 2022 (Isaac Onyango & Company Advocates -vs- Hakika Transport Services Limited).
2. The application indicates that the Applicant/Client objects to the Taxing Officer's decision regarding item numbers 1,2,3,4,5 and the whole of the taxation decision on the Advocates -Client Bill of Costs dated 28th September 2022. The application goes further to state that the Applicant objects to the said Ruling on grounds that are set out in the application.
3. The grounds set out in the application as aforesated are:
 - a. that the Learned Taxing Master erred in holding part B of the applicable Advocates Remuneration Order relevant, yet, failing to consider that the Claimant was awarded ksh. 128,092.
 - b. that the Learned Taxing Master exercised his discretion wrongly in taxing instruction fees at 90,000 without any finding/certification from the learned judge in the judgment that:-
 - i. 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.
 - ii. the claim was of great public interest or involved a novel point of law.



- c. the Taxing Master erred in finding that the Bill was drawn to scale and taxing it as filed.
 - d. the Learned Taxing Master arrived at the wrong conclusion by awarding costs at an aggregate sum of ksh. 819,327.
 - e. the Learned Taxing Master erred in failing to consider the Public Policy implications on the sustained practice of law, in awarding Advocates costs disproportionate to the work done.
4. The Applicant seeks the following reliefs:-
- a. that this court allows the client’s objection dated 19th May 2023, sets aside the Ruling dated 8th May 2023 on the Advocates Bill of Costs dated 28th September 2022, and awards such amounts as it deems just.
 - b. in the alternative, this Court remits the Advocate’s Bill of Costs dated 28th September 2022 for taxation before another Taxing Officer.
5. The Chamber Summons application is supported by a supporting affidavit of David Mvoi Wachenje Advocate sworn on 6th June 2023. It is deponed in the said affidavit that the Applicant objects to the taxation Ruling dated 8th May 2023 on the grounds set out in the Chamber Summons, and that the Applicant adopts into the application herein the Bill of Costs dated 28th September 2022, the submissions and the Ruling dated 8th May 2023.
6. It ought to be noted that the documents mentioned in paragraph 5 of this Ruling, that is the Bill of Costs dated 28th September 2022, the Submissions and the Ruling dated 8th May 2022, are not shown to have been annexed to the said supporting affidavit, and are therefore not on record. The application (taxation reference) is therefore hollow, and there is nothing on record for this Court to interrogate and to consider.
7. I recently stated as follows in this Court’s Miscelleneous Casue No. E029 of 2022 (*isaac Onyango & Co. Advocates -vs- Hakika Transport Services Limited* [2023] eKLR:-
- “...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 issued by the Taxing Officer.”
8. The Applicant does not, also, appear to have filed an objection to taxation prior to filing the reference pursuant to rule 11 of the Advocates (Remuneration) Order 1962, which 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 parties concerned, setting out the grounds of his objection.”



9. What I have seen on record is a letter by the Applicant’s Advocates to this Court’s Deputy Registrar, dated 19th May 2023, stating as follows:-

“...we request for typed copies of the ruling and/or reasons for the decisions to enable us advise our client.”

10. As already stated in this Ruling, there is nothing on record for this Court to consider before making a decision on the Chamber Summons herein. The Court is being asked to make a decision on the basis of nothing; and this is an abuse of the Court’s process. The bill of costs in issue, the proceedings taken before the Taxing Officer and the Taxing Officer’s impugned decision have not been placed before this Court.

11. The Chamber Summons application dated 6th June 2023 is incompetent, and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9th NOVEMBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

