



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

APPEAL NO. E013 OF 2021

SAMUEL OMONDI ADERA.....APPELLANT

VERSUS

LORE AND CO ADVOCATES.....RESPONDENT

(Being an Appeal from the Ruling of Deputy Registrar Hon. B. Omollo delivered at Kisumu on 12th April 2021 in Employment and Labour Relations Misc Cause No. 18 of 2020)

JUDGMENT

1. On 12 April 2021, the Taxing Officer taxed an advocate/ client bill of costs presented by Lore & Co. Advocates (the Respondent) at Kshs 133,655 /- (erroneously titled party to party bill of costs).
2. Samuel Omondi Adera (the Appellant) was dissatisfied, and on 22 April 2021, he lodged a Memorandum of Appeal with the Court contending:
 - (1) THAT the Learned Magistrate erred in law by admitting and putting into consideration the bill of costs contained in the Miscellaneous Application No. 18 of 2020.
 - (2) THAT the Learned Magistrate erred in failing to acknowledge that the Miscellaneous Application was filed in mischief and as an attempt to confuse the court process, which was simply to tax the bill of costs that was filed by the Claimant on 11th October 2019 under Cause No. 31 of 2015.
 - (3) THAT the learned Magistrate did not consider the facts raised in the submissions by the Respondent/client in the said Miscellaneous Application No. 18 of 2020.
 - (4) THAT the learned Magistrate failed to acknowledge that the judgment in Cause No. 31 of 2015 was delivered by Hon Maureen Onyango in the Employment and Labour Relations Court on 8th day of June 2017, and soon thereafter the applicant in the Miscellaneous Application filed a bill of costs on 5th September 2017 of Kshs 235,642/- which was then taxed to Kshs 168,690/-. The bill was then duly settled by the Respondent in Cause No. 31 of 2015.
 - (5) THAT both the judgment decretal sum of Kshs 2,076,240/- and costs of Kshs 168,690/- arising from Cause No. 31 of 2015 were all taken by Mr Lore of Lore and Company Associates, and he disappeared.
 - (6) THAT having failed to trace him to hand over my compensation, I sought the intervention of the Honourable Court through a Notice of Motion filed on 9th of March 2018. The search for Mr Lore took time and culminated in two warrants of arrests being issued to commit him to civil jail, with the first one of 7th February 2018 being executed through the office of the OCS Central Police Station, Kisumu.
 - (7) THAT all the time that Lore & Co Associate represented the client in Cause No. 31 of 2015, his advocacy fee were fully settled, including for court attendances, service and filing of documents. At no time to date did he raise a complaint against the client regarding any pending payments. It is from these payments that he drew the bill of costs out, which he pocketed Kshs 168,690/-.
 - (8) THAT the bill of costs taxed in September 2017 to Kshs 168,690/- is the same bill of costs with the same lines and dates contained in the Miscellaneous Application No. 18 of 2020, albeit with exaggerated amounts charged. The question is, how can a bill of similar dates and lines dating to 2015 that had been settled by the Respondent be brought back to Court through a Miscellaneous Application Cause No. 31 of 2015 for representation by Lore and Company Advocates. In any case, it is the Claimant in Cause No.

31 of 2015 that has suffered losses in the search for his rightful compensation as contained in the judgment of 8th June 2017 and should be ventilated.

(9) THAT Mr Lore of Lore and Co Advocates having been paid fully by the Claimant on Cause No. 31 of 2015 having pocketed the Kshs 168,690/- from the bill of costs as evident from the payment by the Respondent in Cause No. 31 of 2015 and to file another bill under a Miscellaneous Application is unprecedented and defeats the law of natural justice.

(10) THAT the Miscellaneous Application No. 18 of 2020 is fictitious, fraudulent and was filed in bad faith. It totally lacks basis and should be dismissed with costs.

3. Pursuant to Court directives issued on 6 October 2021, the Appellant filed a Record of Appeal on 12 November 2021 and submissions on 14 December 2021.

4. The Respondent filed its submissions on 20 December 2021.

5. The Court has considered the Record of Appeal and the submissions and come to the view that the Appeal is not only incompetent but not merited.

6. First, the Appellant was challenging, through the Appeal, the decision of the Taxing Officer, which was delivered on 12 April 2021.

7. Under Paragraph 11 (Regulation 11/Rule 11) of the Advocates Remuneration Order, a party interested in objecting to a decision of a Taxing Officer is required to, at the first instance to give notice of objection to the Taxing Officer before the person applies to a Judge through a Summons.

8. If the person is not satisfied with the decision of the Judge, an appeal lies to the Court of Appeal, but with leave. The application to the Judge is ordinarily known as a Reference.

9. The Appellant did not file a Reference.

10. Addressing the implication of Paragraph 11 of the Advocates Remuneration Order, the Court stated in *Machira & Co. Advocates v Arthur K. Magugu (CA 199/2012) eKLR:*

Rule 11, therefore, provides for ventilation of grievances from such decisions through references to a Judge in chambers. The effect may be viewed as an appeal or a review, but these being legal terms in respect of which different considerations apply, they should not be loosely used. Appeals require the typing of proceedings, compiling of records of appeal and hearing of the same in open Court. Reviews, however, would require provisions akin to those in Section 80 of the Civil Procedure Act of discovery of new and important matters, errors on the face of the record and so on. In our view, the Rules Committee intended to avoid all that and provide for a simple and expeditious mode of dealing with decisions on the Advocate's bill of costs through reference under Rule 11 to a Judge in chambers.

11. The Appellant herein did not approach the Court as envisaged.

12. Second, there is a distinction between a party and party bill of costs and an advocate and client bill of costs.

13. Monies taxed in a party to party bill of costs belong to the successful client, and the advocate is generally under an obligation to pay over the same to the successful client (the Court notes that the party to party bill of costs was taxed at Kshs 168,690/-).

14. However, when an advocate files an advocate/client bill of costs, he or she is seeking payment of legal fees for professional services rendered.

15. The Appellant herein did not deny that the Respondent provided him with legal services. His bone of contention appears to be that he had settled all the fees due to the Respondent for legal services rendered.

16. The Court has scoured through the record and has not found any records or evidence placed before the Taxing Officer to show that the Appellant had made any such payments.

17. If the Appellant had paid the Respondent for professional services rendered and he believed that the Respondent was not entitled to any further fees, he should have asked for reconciliation and/or taking of accounts at the appropriate forum.

18. The Appeal is dismissed with no order on costs considering that the Appellant, a layperson, was acting in person.

Delivered through Microsoft teams, dated and signed in Kisumu on this 2nd day of February 2022.

Radido Stephen, MCI Arb

Judge

Appearances

Appellant In person

For Respondent Ko'winoh & Co. Advocates

Court Assistant Chrispo Aura