



**Martin Malalu Wanyonyi p/a Kimaru Kiplagat & Company Advocates v  
Malvinder Singh Mann t/a Ikohi Traders (Miscellaneous Civil Application  
15 of 2020) [2022] KEELRC 12838 (KLR) (14 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12838 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION 15 OF 2020  
NJ ABUODHA, J  
OCTOBER 14, 2022**

**BETWEEN**

**MARTIN MALALU WANYONYI P/A KIMARU KIPLAGAT & COMPANY  
ADVOCATES ..... CLAIMANT**

**AND**

**MALVINDER SINGH MANN T/A IKOHI TRADERS ..... RESPONDENT**

**JUDGMENT**

1. By chamber summons dated July 26, 2021 the appellant sought orders among others that:
  - a. The decision/ruling of the Deputy Registrar made on 18/6/2022 be set aside.
  - b. Matter be remitted to another Registrar for assessment of the Advocate-client bill of costs.
  - c. The advocate- Client bill of costs dated 2/12/2020 applicable scale for purposes of the assessment be lower court scale.
2. The application was based on main grounds that:
  - a. That the learned Deputy Registrar erred in law and fact in applying the High Court scale in the assessing the Advocate-Client bill of costs where the amount in issue of Ksh. 6,861,190.02 fell within the Subordinate Court's jurisdiction.
  - b. That the learned Deputy registrar erred in law and fact in allowing item 2 getting up fees of Ksh. 79,074.60 without regard to the law on the Advocate-Client bills and getting up fees as certification by trial judge.



- c. That the Learned Deputy Registrar erred in law and fact in failing to apply and consider the provisions of Schedule 7 of the Advocates Remuneration (Amendment) Order hence an erroneous decision.
  - d. That the learned Deputy Registrar erred in law and fact in allowing duplicated items in the bill contrary to the law.
  - e. That the learned Deputy Registrar erred in law and fact in arriving at a decision that is not supported by the law and erroneous in the circumstance.
  - f. That the learned Deputy Registrar erred in law and fact in failing to discount the sums that had been paid by the Respondent/Applicant prior to the filing of the bill and the mutual advocate-client understanding.
3. In the submissions in support of the application, the applicant submitted that the subject matter of the primary suit in which the respondent was instructed to act was Ksh.6,861,190/02. The amount fell within the Magistrate's Courts jurisdiction hence the applicable scale for purposes of assessment of Advocate-Client Bill would be the lower Court scale taking into account the fact that the pecuniary jurisdiction of the Magistrate Court is Ksh.20 million and below.
  4. Counsel further submitted that the taxing officer erred in law and fact in applying the High Court scale hence an erroneous decision on fees payable to the advocate. According to counsel the decision to award Ksh.587,269/22 was unjustified. On this submission counsel relied on paragraph 58 of the [Advocates Remuneration Order](#).
  5. Counsel further submitted that the instruction fees is determined by the value of the subject matter. In this particular case the value of the subject matter was determined by the judgment award and not the amount that has been pleaded. However, a perusal of the ruling reveals that the taxing officer based her decision on the amount that was pleaded. The judgment of the Court in the primary suit delivered on November 6, 2020 was a dismissal and no amount or specific figure was awarded to warrant the instruction fees to be calculated from it. Taking into account that the suit herein was dismissed it followed that the instruction fees according to the subordinate Court scale ought to have been Ksh.50,000/= in this respect counsel relied on paragraph 7(A) of the [Advocates \(Remuneration\) \(Amendment\) Order, 2014](#).
  6. Concerning getting up fees, counsel submitted this was not applicable in advocate client bill since the same is chargeable under party and party bill of costs with regard to VAT counsel also submitted that the same was not awardable as the same was not provided for under [Advocates Remuneration Order](#).
  7. Regarding service, since the scale ought to have been at subordinate Court scale service within 3 kilometers of the subordinate Court ought to have been Ksh.1,400/= and not Ksh.2,100/= for each item awarded. On attendance, counsel submitted the taxing officer ought not to have awarded this item since the same had been paid under instruction fees. There was no mention of Court attendance.
  8. The respondent supported the ruling of the Taxing Officer and stated the decision was supported in law and the Court arrived at the decision upon perusing the parent file and ascertained the items that had been charged.
  9. According to counsel, the firm of Kimaru Kiplagat was instructed when the matter was filed at the High Court in Nakuru before the same was transferred to Eldoret ELRC and the applicable scale was the High Court one. The Deputy registrar was therefore right in applying the High Court scale.



10. From the statement of scale the claim was Ksh.6,861,190/02 which was specifically pleaded. The Deputy Registrar was therefore right in taxing the instruction fees based on the sum of Ksh.6,861,190/02 as per schedule 6(1) (d) of the Advocates Remuneration Order.
11. According to counsel his efforts resulted into a dismissal order which saved the respondent from paying the sum of Ksh.6,861,190/02 and the applicant is entitled to getting up fees due to complexity of the matter, research done and preparation that was put in place to defend the claim.
12. The Court has carefully considered the Ruling by the Learned Deputy Registrar and became of the view that the same is well reasoned and in conformity with the Advocates Remuneration Order and does not intend to disturb the same.
13. The only issue the Court would like to address is the contention that the sum claimed being Ksh.6,861,190/02 was within the pecuniary jurisdiction of the subordinate Court hence the applicable scale ought to have been the subordinate Court scale.
14. This Court is established under article 162(2) of the constitution with exclusive jurisdiction to deal with employment and labour relations disputes. It is a Court with equal status to the High Court therefore all matters filed before it should be taxed on the High Court scale unless the judge in his or her own discretion deems it fit to order that costs be assessed at subordinate Court scale.
15. Save for the above observations the Court finds the appeal from the Deputy Registrar's ruling without merit and the same is hereby dismissed with costs.
16. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 14<sup>TH</sup> DAY OF OCTOBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

