



**Achola Jaoko & Co. Advocates v Odera (Miscellaneous Case 5 of 2019)
[2022] KEELRC 13490 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13490 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE 5 OF 2019
AN MWAURE, J
DECEMBER 7, 2022**

BETWEEN

ACHOLA JAOKO & CO. ADVOCATES APPLICANT

AND

PHILIP OTIENO ODERA RESPONDENT

RULING

1. The applicant has brought a notice of motion dated April 14, 2022 and he is praying for:
 1. That judgment be entered for the applicant for Kshs 113,284 together with interest at 14% per annum with effect from March 5, 2021 being the date of taxation.
 2. That the respondent be condemned to bear the costs of this application.
2. His prayers are premised on the following grounds:
 - a. That a certificate of taxation for Kshs 113,284 was issued on November 8, 2019 and the same has been disputed, set aside or altered.
 - b. That the retainer of the advocates services has not been disputed.
 - c. That the ends of justice shall be served only upon this application being granted.
3. The application is undefended. There is an affidavit of service dated July 28, 2022 where one Bernard Otieno Ogare purported he served the notice of motion and the hearing notice on the respondent.
4. The applicant in his affidavit dated July 28, 2022 deponed he represented the respondent on Suit No 1030 for unlawful termination by his employer then Wells Fargo Limited.
5. He says he raised a fee note and wrote several letters to the respondent dated 16/9/2010, 20/5/2019, 20/6/2019 and 5/3/2021 but the respondent has not settled the same.



6. He subsequently filed a bill of costs dated 17th January 20th and total fee was assessed at Kshs 113,284/-.
7. A certificate of taxation has not been set aside or altered and there is no dispute against him. The certificate of taxation is dated November 8, 2019.
8. The court will rely on section 51 of the Advocates Act which provides as hereunder:
 - (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
 - (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.
9. In view of the foregoing the court therefore enters judgment in favour of the applicant as per the application *vide* the notice of motion dated April 14, 2022 for Kshs 113,204/- together with interest at court rates from date of judgment till full payment as per certificate of taxation dated November 8, 2019.
10. Costs of the application are also awarded to the applicant.
11. Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 7TH DECEMBER, 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE

