



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 4 OF 2014

WILSON WAMWEYACLAIMANT/APPLICANT

VERSUS

HON. ATTORNEY GENERAL.....RESPONDENT

RULING.

1. The ruling herein relates to a Chamber Summons application dated 21st February, 2021 brought pursuant to paragraph 11 of the Advocates Remuneration Order and all enabling provisions of the law. The applicant seeks orders that:

i. This Honourable court be pleased to quash the taxing officer's decision on items numbers 1, 15, 17, 18, 20 & 25, in the Claimant's bill of cost dated 19th October, 2020 and ruling delivered on 7th February, 2021.

ii. Costs of this application be provided for.

2. The application is premised on grounds in the face of the application and a supporting affidavit sworn by Wilson Wamweya the applicant herein.

3. The applicant deposes that the taxing officer erred in law and in fact by taxing off the items listed 1, 15, 17, 18, 20 & 25 in his bill of costs. He states that the taxing officer failed to realize that the Claimant/applicant had an advocate acting on his behalf until 19th October, 2020 when he filled notice to act in person.

4. The applicant states that he had paid all the advocates dues, which he should be able to recover through the bill of costs and which the taxing master taxed off.

5. The applicant further states that he has incurred huge costs which were awarded to him by the court, but the taxing master decided to tax off.

6. The Respondent opposed the application vide grounds of opposition dated 8th July, 2021, wherein, the Respondent states that the application is incompetent and the orders sought are incapable of being granted.

7. The Respondent argues that the bill of costs subject of this application was taxed to scale and that the items taxed off are not provided for in the Remuneration Order.

8. The Respondent states that the taxing master complied with Rule 11(2) and paragraph 75(1) of the Advocates (Remuneration) Order in taxing the subject bill of costs.

9. The applicant urged his application and sought to rely on grounds in the face of his application and his supporting affidavit. The Respondent relied on its grounds of opposition.

Determination

10. The applicant's prayer before this court is that the court be pleased to quash the taxing officer's decision on items numbers 1, 15, 17, 18, 20 & 25, of the Claimant's bill of cost dated 19th October, 2020 and further that cost of this application be provided for.

11. The items in the bill of costs subject of this application are: item 1. Advocates instruction fees- for Kshs.450,000/=; item 15. Advocates attending hearing in court; item 17- Advocate attending hearing in court; item 18- advocate attending hearing in court; item 20- Advocate attending hearing in court and item 25-advocate attending hearing in court all at Kshs,10,000/=.

12. The ruling delivered on the 17th of February, 2021 which is the subject of this application clearly states why the items herein were taxed off. Section 40 of the Advocates Act, provides as follows in respect of recovery of costs by unqualified persons:

“No costs in respect of anything done by an unqualified person in contravention of this Part shall be recoverable in any suit or matter by any person.”

13. The items taxed off in the subject bill of costs, including those that are not subject of this application, are all particularized as “*Advocate attending hearing in court*”. The fact that the applicant at some point decided to act in person, did not make him an advocate.

14. Item 1 of the bill of cost is instruction fees. Instruction fees is only payable to an Advocate acting for a party to the suit. The court held in the case of ***Job Kipkemei Kilach V Director of Public Prosecutions & 2 others (2016) eKLR***, that a party acting in person is not entitled to instruction fees.

15. Although the time subject of the bill of costs is time when the applicant had counsel on board, the bill was filed by him in person and not by the counsel who was on record then.

16. The Applicant has not shown that the taxing officer erred in the way the taxation was arrived at and following the holding in the case of ***First American Bank v Shah & others [2002] 1 E.A. 64***, this Court chooses not to interfere with the taxing officer’s decision

17. The upshot is that the application is dismissed.

18. I make no orders as to costs.

SIGNED, DATED AND DELIVERED AT KISUMU THIS 4TH DAY OF NOVEMBER, 2021

CHRISTINE N. BAARI

JUDGE

APPEARANCE:

CLAIMANT PRESENT IN PERSON

MS. NDOMBI H/B FOR MS. ESSENDI FOR RESPONDENT

MS. CHRISTINE OMOLLO - COURT ASSISTANT