



REPUBLIC OF KENYA



**Maisha Yetu Services Limited v Buyoywa (Civil Miscellaneous Application  
E003 of 2024) [2024] KEHC 14930 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14930 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CIVIL MISCELLANEOUS APPLICATION E003 OF 2024**

**JN KAMAU, J**

**NOVEMBER 28, 2024**

**BETWEEN**

**MAISHA YETU SERVICES LIMITED ..... APPLICANT**

**AND**

**ROSE ALIVISTA BUYOYWA ..... RESPONDENT**

**RULING**

**Introduction**

1. In its Chamber Summons application dated 18<sup>th</sup> January 2024 and filed on 25<sup>th</sup> January 2024, the Applicant herein sought a stay of execution of the taxed costs delivered on 21<sup>st</sup> September 2023 pending the hearing and determination of this Reference and that the decision of the Taxing Officer delivered on the aforesaid date be set aside and assessed afresh by this court.
2. Maureen Tesot, its Advocate, swore an Affidavit in support of the said application and on its behalf. The Applicant asserted that the Judgment in Vihiga PMCC No 104 of 2018 Rose Alivista Buyoywa vs Maisha Yetu Services Limited was delivered on 7<sup>th</sup> October 2021 and costs were awarded to the Respondent. The Respondent filed its Bill of Costs dated 7<sup>th</sup> September 2022 which it opposed. However, the Taxing Officer taxed the same at Kshs 257, 874/=.
3. Aggrieved by the said Ruling, it filed this Reference arguing that the Taxing Officer totally disregarded its submissions which would have demonstrated what amounted to fair and reasonable costs in view of the circumstances herein. It was categorical that the Taxing Officer made serious errors in principle in taxing the said Bill of Costs and thereby arrived at a wrong decision. It was apprehensive that the said decision was irregular and urged the court to set it aside and tax the aforesaid Bill of Costs afresh.
4. In opposition to the present application, George Gisore Mboga, Advocate, swore a Replying Affidavit on 8<sup>th</sup> May 2024 on behalf of the Respondent herein. The Respondent termed the Applicant's Reference as having been incompetent, defective and an abuse of the court's process. She pointed out



that the Applicant had not provided any security for the payment of costs and therefore did not deserve to be granted the order of stay of execution.

5. She stated that the Applicant had neither pointed out the items it was objecting to nor furnished the court with reasons that were given by the Taxing Officer. She added that a reference was in the form of an appeal and that it was incumbent upon the Applicant to have been specific on what it was contesting to enable her address her mind to it.
6. She asserted that her Bill of Costs dated 7<sup>th</sup> September 2022 was drawn to scale and that the Taxing Officer committed no error in taxing it in the sum of Kshs 257,874/=. She was emphatic that it was trite law that interest on special damages accrued at court rates from the date of filing suit. He urged the court to dismiss the Applicant's Reference for lack of merit.
7. The Applicant's Written Submissions were dated and filed on 13<sup>th</sup> June 2024 while those of the Respondent were dated 21<sup>st</sup> June 2024 and filed on 25<sup>th</sup> July 2024. This Ruling is based on the said Written Submissions which both parties relied upon in their entirety.

### **Legal Analysis**

8. The Applicant submitted that Paragraph 11 of the Advocate Remuneration Order empowered the High Court to entertain a Reference on assessment of the Bill of Costs as was held in the cases of Miscellaneous No E31 of 2022 David Maingi vs Juma Wadhier & Daniel Omondi Juma (Suing as legal representative on behalf of the estate of Angeline Aoko Juma) (eKLR citation not given) and Donholm Rahisi Stores (firm) vs E.A Portland Cement Ltd & Another vs Abraham Kiprotich Chebet [2022] eKLR .
9. It argued that as at the time of writing its submissions, it had not been furnished with the typed and certified copy of the Ruling by the Trial Court and thus failure to annex a copy of the same was beyond its control. It asserted that it was not in charge of the court files or the typing of the Ruling. It asserted that it had requested the same but the same had never been availed.
10. It cited the case of David Maingi vs Juma Wadhier & Daniel Omondi Juma (Suing as the legal representative on behalf of the estate of Angeline Aoko Juma) (Supra) where it was held that filing of a reference was not dependent on availability of reasons or decisions for taxation other than the reasons contained in the ruling for taxation and therefore the failure of a magistrate to give those reasons was not fatal to the reference as the same would be more or less a duplication on the ruling of taxation.
11. It also referred to Schedule 7 of the Advocates Remuneration Order, 2014 and Order 21 Rule 9A, 9B, 9C and 9D of the Civil Procedure (Amendment) Rules, 2020 and noted that the Respondent did not file any receipts and/or supporting documents in her Bill of Costs as provided by Order 21 Rule 9A of the Civil Procedure (Amendment) Rules, 2020. It was emphatic that it clearly objected to the items of the Bill of Costs in its Written Submissions that it had annexed to its application. It proposed that the Bill be assessed to Kshs 143,971/= and urged the court to allow its application with costs.
12. The Respondent also relied on Rule 11 of the Advocates Remuneration Order and submitted that whereas this court granted the Applicant leave to file the Reference herein, there was no mention of the items that it had been objected to. She was emphatic that proper grounds ought to have been placed before this court outlining the items objected to.
13. She asserted that as the Ruling was delivered on 21<sup>st</sup> September 2023, the fourteen (14) days in which the Applicant was allowed to raise its objection lapsed on 5<sup>th</sup> October 2023 and that no notice had been given to the Taxing Officer, however late, objecting to any of the items.



14. She was categorical that items No 1, 25, 27, 32, 39, 3, 6, 8, 9, 19, 26, 37, 38, 22, 23, 34, 35 & 36 that the Applicant objected to in its Submissions dated 12<sup>th</sup> April 2023 had been drawn to scale as provided under Schedule 7 of the Advocates Remuneration Order.
15. She asserted that no fault had been attributed to the Taxing Officer. She pointed out that the Applicant had not annexed the Taxing Officer's Ruling and she would therefore be prejudiced if this court considered the same without her submissions. She was emphatic that this court could not be left to look at every item in the bill as if it was a first sitting court.
16. Paragraph 11 of the Advocates Remuneration Order provides a detailed process of objection to taxation of costs. It states as follows:

“ 11. Objection to decision on taxation and appeal to Court of Appeal.

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 the parties concerned, setting out the grounds of his objection.
  3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
  4. The High court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”
17. In the instant case, the decision by the taxing master was made on 21<sup>st</sup> September 2023. The Applicant did not give any notice in writing to the Taxing Officer of the items of taxation to which it objected. It did not also seek the reasons for the Taxing Master's decision.
  18. The Applicant explained that failure to annex the Taxing Officer's decision in its application was because even as at the time of writing its Written Submissions, it had not yet been furnished with the said decision.
  19. In its letter to the Executive Officer Vihiga Law Courts dated 7<sup>th</sup> November 2023, it requested to be furnished with the Ruling that was delivered on 21<sup>st</sup> September 2023. The said letter did not indicate if it was objecting to any items in the Respondent's Bill of Costs dated 7<sup>th</sup> September 2022. It merely sought for a copy of the Ruling which was outside the fourteen (14) days that had been stipulated in Paragraph 11 (1) of the Advocates Remuneration Order.



20. Ordinarily, failure to seek the reasons under Paragraph 11(1) of the Advocates Remuneration Order was not fatal. As was held by the Court of Appeal in the case of Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR, absence of such reasons did not in itself preclude the objector from filing a competent reference.
21. This court took judicial notice that taxing officers normally gave the reasons in their decisions for taxation. These self-contained decisions obviated the necessity to furnish fresh reasons when they were sought for. A taxing officer could furnish the parties the same ruling that he or she had delivered. However, where a taxing officer had not given reasons in his or her decision, he or she was obligated to furnish the same to the party who had requested for the same.
22. As the decision of the Taxing Officer was not placed before this court, it could not with certainty confirm if the said decision contained reasons.
23. The procedure for filing a reference was well set out in Paragraph 11 of the Advocates Remuneration Order. From the Applicant's Written Submissions, it had not been furnished with a copy of the Ruling that it had sought in its letter of 7<sup>th</sup> November 2023. As it did not set out in the said letter what items in the Respondents Bill of Costs dated 9<sup>th</sup> September 2022 it was objecting to, it was difficult for this court to ascertain if the Taxing Officer erred by allowing items that were not drawn to scale.
24. Going further, as the Applicant had not given notice to the Taxing Officer of the items it was objecting to, it was difficult to compute the time from when time for filing a reference would start running. The request for the Ruling by the Applicant and failure by the Executive Officer Vihiga Law Courts to furnish it with a copy of the Ruling were problematic for two (2) reasons. The request for the Ruling did not comply with the provisions of Paragraph 11(1) of the Advocates Remuneration Order. The Executive Officer did not even respond to the said request which could have assisted this court in at least computing the time lines under Paragraph 11(2) of the Advocates Remuneration Order.
25. Failure to adhere to the provisions of Paragraph 11(1) of the Advocates Remuneration Order rendered the Reference as filed incompetent and defective. In this regard, this court associated itself with the holding in the case of Twiga Motor Limited vs Hon Dalmás Otieno Onyango [2015] eKLR where the court therein determined that the time limits in Paragraph 11 of the Advocates Remuneration Order had been put there for a reason and that failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.
26. The Applicant had to first comply with the provisions of Paragraph 11(1) of the Advocates Remuneration Order before filing a reference before this court. It was the considered view of this court that the present Reference was premature.

### **Disposition**

27. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Chamber Summons application dated 18<sup>th</sup> January 2024 and filed on 25<sup>th</sup> January 2024 was incompetent and defective and the same be and is hereby struck out with costs to the Respondent herein.
28. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024**

**J. KAMAU**

**JUDGE**

