



**Ogutu t/a Visiongate Eye Care Consultant v JP Makokha & Company, Advocates (Miscellaneous Application E067 of 2022) [2024] KEHC 14890 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14890 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION E067 OF 2022  
WM MUSYOKA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**DR VINCENT OGUTU T/A VISIONGATE EYE CARE  
CONSULTANT ..... APPLICANT**

**AND**

**JP MAKOKHA & COMPANY, ADVOCATES ..... RESPONDENT**

**RULING**

1. I delivered a ruling herein on 2<sup>nd</sup> February 2024, where I ordered that the Advocate-client bill of costs, dated 1<sup>st</sup> November 2022, between the parties herein, be taxed afresh. There was compliance. The said bill was placed before Hon. T. Madowo, Deputy Registrar, and was taxed afresh. A ruling on the taxation was delivered on 23<sup>rd</sup> July 2024, taxing it at Kshs. 264,945.00.
2. A summons has been placed before me, dated 1<sup>st</sup> August 2024. It seeks review of the ruling of 23<sup>rd</sup> July 2024, to take into account a sum of Kshs. 141,000.00, which the applicant had allegedly paid to the respondent as down payment, and another amount of Kshs. 900,000.00 recovered from Trident Insurance, by the respondent, which was never remitted to him.
3. When the matter came up, before me, on 16<sup>th</sup> October 2024, the respondent indicated that he had responded to the application. I have, however, not seen the alleged response in the file of papers before me.
4. The order sought in the application, dated 1<sup>st</sup> August 2024, is for review or setting aside of orders made by the Deputy Registrar/taxing officer. Review of a court order is done by the judicial officer who made it, or by his or her successor, according to Order 45 rule 2 of the *Civil Procedure Rules*. That would mean that the review of the orders made on 23<sup>rd</sup> July 2024 ought to be by Hon. Madowo, or, in the event she is no longer in the station, by her successor as Deputy Registrar. The application, dated 1<sup>st</sup>



August 2024, ought not have been placed before me, but before the Deputy Registrar, as the officer who taxed the impugned bill.

5. As Judge, I can only be seized of the matter on appeal, by way of a reference. Proceedings at the High Court, regarding bills of taxation, are unique. Unique because both the Deputy Registrar and the Judge are judicial officers at the High Court. Both exercise a judicial function, although the Deputy Registrar is largely an administrative officer. Orders made by both officers are orders of the High Court. An order by the Deputy Registrar, as such or as taxing officer, is an order of the High Court. However, it cannot be appealed against at the Court of Appeal, for appeals to that court are only in respect of decisions of the Judge of the High Court. The way to challenge a decision of the Deputy Registrar, in taxation proceedings, is by way of reference to the Judge of the High Court, which would be some sort of an internal appeal.
6. What has been placed before me, in the application, dated 1<sup>st</sup> August 2024, does not challenge the decision of the taxing officer, of 23<sup>rd</sup> July 2024, on its merits. The applicant expresses satisfaction with the taxation, in his supporting affidavit, save that he says that the taxing officer did not factor the amount of Kshs. 141,000.00, which he had paid to the respondent. That is an issue for review, on grounds of error on the face of the record, or other sufficient ground, which, under Order 45 of the [\*Civil Procedure Rules\*](#), ought to be placed before the taxing officer.
7. The applicant also raises the issue of Kshs. 900,000.00, an amount allegedly received by the respondent, and which has not been remitted to him. That is a matter that the applicant ought to pursue in separate proceedings, either in the particular cause, which gave rise to recovery of that amount, or in disciplinary proceedings before the Advocates Disciplinary Tribunal, unless it is demonstrated that the amount was received on account of the proceedings which gave rise to the instant taxation. In any event, the taxing officer found that no evidence had been placed before her that the respondent owed the applicant that amount.
8. In view of everything that I have said so far, it should be clear that the application, dated 1<sup>st</sup> August 2024, is improperly before me. Let it be placed before the Deputy Registrar for consideration. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Dr. Vincent Ogutu, the applicant, in person.

Advocates

Mr. Makokha, instructed by JP Makokha & Company, Advocates for the respondent.

