



Karikuki t/a Gacau Kariuki & Company Advocates v Mathea (Miscellaneous Reference Application E230 of 2024) [2024] KEHC 16712 (KLR) (Commercial and Tax) (22 November 2024) (Ruling)

Neutral citation: [2024] KEHC 16712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

MISCELLANEOUS REFERENCE APPLICATION E230 OF 2024

BM MUSYOKI, J

NOVEMBER 22, 2024

**IN THE MATTER OF TAXATION OF SCCCOMM E134 OF 2022 – MILIMANI,
NANCY WANJIKU MATHEA -VS- KARTECH ENGINEERING LIMITED**

BETWEEN

**EDWARD GACAU KARIKUKI T/A GACAU KARIUKI & COMPANY
ADVOCATES APPLICANT**

AND

NANCY WANJIKU MATHEA RESPONDENT

RULING

1. The applicant, an advocate of the High Court of Kenya has brought this application vide chamber summons dated 19th March 2024 praying for the following orders;
 1. This application be certified urgent and heard ex-parte in the first instance.
 2. The Honourable Court be pleased to stay execution of the ruling delivered on 16th February, 2024, Certificate of Taxation dated 7th March 2024 and any other orders that may be issued pursuant thereto pending hearing and determination of this application inter-parties.
 3. The decision of the Taxing Officer as evidenced in the ruling delivered on 16th February, 2024 in respect to items no. 4, 8, 9, 11 and 12 of the Applicant’s Bill of Costs dated 18th July 0223 and Certificate of Taxation dated 7th March 2024 be set aside.
 4. Items no. 4, 8, 9, 11 and 12 of the Applicant’s Bill of Costs dated 18th July, 2023 be taxed afresh by this Honourable Court and/or referred to another Taxing Master for re-taxation.



5. Cost of this Application be provided for.
2. The application is supported by affidavit of the applicant sworn on 19th March 2024 annexed to which are an undertaking dated 29th July 2020, statement of claim which is said to have been in small claims court case number E314 of 2022, response to the statement of claim, a copy of decree in the small claims court case, several correspondences, cheques numbers 001424 and 001423, bill of costs dated 18th July 2023 which does not bear the case number, ruling dated 16-02-2024 and certificate of costs in this court's miscellaneous application number E629 of 2023 dated 7-03-2024. There is also a further affidavit which does not appear to be dated although its annexures indicate that it was sworn on 29th July 2024.
3. The respondent has opposed the application through her replying affidavit dated 31st May 2024. The respondent complains that the reference has been brought for purposes of frustrating her and allowing the applicant to continue retaining decretal sum received on her account. She avers that the applicant has not demonstrated what wrong principles of law he alleges the taxing master failed to consider or wrongly applied while taxing the contested items.
4. I have carefully gone through the application and affidavits of both parties as well as submissions by the applicant dated 29th July 2024 and those of the respondent dated 23rd July 2024. Having done so, it is my opinion that the application as drawn does not make sense until one goes into scrutiny of documents filed in a different cause. Unless I do so, I am not able to appreciate the prayers sought. The prayers do not make reference to any cause or case number. Instead, they simply refer to a ruling and a certificate of costs whose case numbers are not disclosed on the face of the application which position should ordinarily take the court to the proceedings in this matter.
5. This matter was commenced by way of chamber summons application dated 19th March 2024 and filed on 19th March 2024 yet the prayers in the application talk of a ruling dated 16th February 2024 and certificate of costs dated 7th March 2024 which obviously means that there is no such ruling or certificate in this matter. Only after the court went through the supporting affidavit which does not in its body even mention the cause number where the taxation was done and annexures thereto did it appreciate that the application is about a ruling in this court's misc. application number E629 of 2023. I would have expected reference to have been filed in the same cause in which the contested bill of costs was taxed and not an independent application. That way, the court would not have laboured in appreciating the prayers sought in the application. In my view, even if the application were to be granted in its entirety as it is, the orders would be difficult to execute. This court cannot grant prayers which are not properly sought neither can it amend the application as the same belongs to the applicant. In the circumstances, I find that the application is incompetent and fatally defective and it is a proper candidate for striking out.
6. Even if I were wrong on the issue of competence of the application, I would still not grant the application. I have gone through the annexures to the applicant's affidavits especially the bill of costs and the ruling dated 16-02-2024 in misc. application number E629 of 2023 and I am unable to see any departure from the established principles of taxation the taxing master can be faulted for. The submissions by the appellant do not justify Kshs 5,000.00 for service of statement of claim (item 4), Kshs 3,000.00 for drawing decree (item 8), Kshs 5,000.00 for service of draft decree (item 9), Kshs 31,580.00 for perusals and copies (item 11) and Kshs 50,000.00 for routine telephone calls (item 12). I find the reasons given by the taxing master for the taxation sound and justified.
7. In a nutshell the application dated 19th March 2024 is hereby dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024.



B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered online in presence of:

Mr. Kariuki G.E. for the applicant; and

Mr. Kibuthu for the respondent.

