



**KMK Law LLP v Global Trucks Limited (Miscellaneous Civil Application E782 of 2023)
[2024] KEHC 16714 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E782 OF 2023**

**BM MUSYOKI, J
DECEMBER 20, 2024**

BETWEEN

KMK LAW LLP APPLICANT

AND

GLOBAL TRUCKS LIMITED RESPONDENT

RULING

1. On 22nd March 2024, the Honourable Deputy Registrar, Stephany Bett after hearing all the parties in this cause, delivered a ruling in which she taxed the applicant’s bill of costs dated 14th September 2023 at Kshs 575,449.88. A certificate to that effect was issued on 6th May 2024 but before then, the respondent had on 17th April 2024 filed chamber summons dated 16th April 2024 seeking to set aside the decision of the taxing officer. The applicant followed with a notice of motion dated 15th May 2024 praying that this court enters judgment against the respondent for the taxed costs under Section 51(2) of the *Advocates Act*.
2. The respondent’s application is opposed through a replying affidavit sworn by Muguro Irungu an advocate of this court on 15-05-2024 while the applicant’s application is opposed vide a replying affidavit sworn by the respondent’s director, one Moses Mavoko on 29th May 2024.
3. Both applications were heard by way of written submissions. The court record has three sets of submissions in respect of the two applications. There are respondent’s submissions dated 26th August 2024 which appear to be in respect of its application only. The second set of submissions is dated 29th July 2024 filed by the applicant in opposition to the respondent’s application dated 16th April 2024 while the third set is dated 29-07-2024 filed by the applicant in respect of its application dated 15-05-2024. This ruling is in respect of the two applications and I will begin with the respondent’s application dated 16th April 2024.



Application dated 16th April 2024

4. I have read through the application and its supporting affidavit, replying affidavit by Muguro Irungu aforesaid and submissions of the parties and it is clear to me that the application is a reference from the taxation decision dated 22-03-2024 although it has some prayers which cannot be granted in a reference.
5. The Advocates Remuneration Order which is a subsidiary legislation under the *Advocates Act* provides for the procedure for challenging decisions of a taxing officer. The procedure is provided under Paragraphs 11(1) and (2) of the Order. Under the above stated paragraphs, a party who is aggrieved by a decision of the taxing officer should within fourteen days of the ruling file an objection specifying the items they are objecting to and asking for reasons for taxation of the identified items. After the reasons are supplied, the party then must file the application for setting aside or variation otherwise known as reference within fourteen days.
6. I have carefully gone through the record of this matter and I have not seen a notice of objection filed by the respondent. The supporting affidavit does not state that the respondent filed any objection. The issue has been raised by the applicant in its replying affidavit and submissions but it has not been answered by the respondent. I hold position that, where the reasons for taxation are contained in the ruling of the taxing officer, the aggrieved party may file reference without giving the notice of objection or asking for the reasons. This must however be done within fourteen days of delivery of the ruling. The ruling the respondent is challenging was delivered on 22-03-2024 meaning that time for raising the objection and asking for reasons or filing the reference without having filed the objection or asking for the reasons lapsed on 5th April 2024. This application was filed on 17-04-2024 which is clearly outside the statutory period. The application before me has no prayer for extension of time for filing the reference. The respondent has not exhibited any order granting it leave to file the reference out of time.
7. Where a procedure for performing an act or approaching a court of law has been expressly provided in law, the parties are bound to follow that procedure including the timelines given therein. It is my opinion and I believe the position in law that, any pleading or documents filed out of statutory time without the leave of the court is incompetent and does not deserve consideration on merit. This was the position taken by the Supreme Court of Kenya in *County Executive of Kisumu v County Government of Kisumu & 8 Others (2017) KESC 16 (KLR)* where it held that;

No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court.’
8. In view of the above, I find that the respondent’s application is incompetent for having been filed out of time and failing to adhere to the statutory procedure of challenging a decision of a taxing officer. For these reasons, the application dated 16th April 2024 is hereby struck out with costs to the applicant which I assess at Kshs 5,000.00 all inclusive.

Application dated 15-05-2024

9. As observed above, the respondent has not filed submissions to this application but it has filed a replying affidavit sworn by its director. In the affidavit, the respondent opposes the application on ground that it had paid some Kshs 560,000.00 to the applicant which had not been credited to the bill of costs or the decision of the taxing officer. The respondent prays in the affidavit that the amount paid by to the applicant be accounted for before judgment is entered.



10. It is noteworthy that the respondent has raised the same issue in this court's miscellaneous applications numbers 783 of 2024 and 786 of 2024. The amount it claims to have paid the applicant in the three matters is the same Kshs 560,000.00. The applicant has not denied these payments but states that the same was in respect of ten other matters it has handled for the respondent. As I have held in the other two matters, taxations are meant to ascertain what the advocate is legally and rightfully entitled to have charged and not necessarily what is due to them. It is after taxation, that the parties take account to ascertain the amount owing to the advocate if any. The fact that a client had paid legal fees or costs cannot be a bar to entry of judgement but can be a bar to execution of the judgment without giving credit to what has already been paid. I don't think that this is a task I can deal with in this ruling.
11. Considering the above, I do not see any reason for denying the prayers sought in the application dated 15-05-2024. The same is allowed in the following terms;
 - a. Judgment is entered for the applicant against the respondent for a sum of Kshs 575,449.88.
 - b. Subject to order (e) below, the decretal sum shall attract interest at 14% per annum from 22-03-2024 until payment in full.
 - c. The applicant is awarded costs of the application which I hereby assess at Kshs 5,000.00.
 - d. Before the decree herein is executed, the parties shall appear before the Deputy Registrar and take accounts and give credit for any sum which may have been paid to the applicant.
 - e. The interest awarded in (b) above shall only be applicable to the amount found owing after the accounts ordered (d) above are taken.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Irungu for the applicant/advocate and Mr. Osoro for the respondent/client.

