



**KMK Law LLP v Global Trucks Limited (Miscellaneous Civil Application E783 of 2023)
[2024] KEHC 16711 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E783 OF 2023**

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

BETWEEN

KMK LAW LLP APPLICANT

AND

GLOBAL TRUCKS LIMITED RESPONDENT

RULING

1. For ruling today is the respondent’s application dated 16th April 2024 which seeks to set aside the decision of the taxing officer dated 22nd March 2024 and the applicant’s application dated 15th May 2024 which seeks entry of judgment against the respondent for Kshs 549,927.00 as per certificate of taxation dated 6th May 2024. The respondent’s application is opposed through a replying affidavit sworn by Muguro Irungu on 15-05-2024. The applicant’s application is opposed through a replying affidavit sworn on 29th May 2023 by one Moses Mavoko a director of the respondent.
2. This matter came for direction before Honourable Justice Alfred Mabeya on 30-07-2024 when the court ordered that the two applications be heard by way of written submissions and that the submissions be filed within thirty days. I will start with the respondent’s application dated 16th April 2024 which seeks the following orders;
 1. Spent.
 2. This Honourable Court be pleased to vacate and set aside in its entirety ruling of the Hon. Stephany Bett dated and delivered on the 22nd day of March 2024 and all the consequential orders be hereby set aside.
 3. This Honourable Court be pleased to review its ruling delivered on the 22nd day of March 2024.



4. The Court be pleased to refer the applicant's/respondent's bill of costs dated 14th September 2023, for fresh taxation before taxing master and with suitable directions.
 5. In the alternative to (3) above, this Honourable Court be pleased to exercise its discretion and to tax the Bill of Costs dated 14th September 2023 itself.
 6. This Honourable Court issues a stay of execution of the certificate of costs pending determination of this application.
 7. This Honourable Court set aside the certificate of costs pending the determination of this application.
 8. The costs of this application be provide for.
3. Prayer 6 of the application is premature as the certificate could not be executed before entry of judgment while prayer 7 does not make sense to me. The respondent filed submissions to its application which are dated 26th August 2024 while the applicant filed theirs to the same application dated 29th July 2024. I have read through the application, replying affidavit by Muguro Irungu aforesaid and submissions of the parties. It is clear to me that the said application is challenging taxation of the applicant's bill of costs dated 14th September 2023 vide ruling delivered in 22-03-2024.
 4. The respondent's application is supported by affidavit of Moses Mavoko sworn on 16-04-2024. The deponent contends that the taxed amount was excessive because the primary matter for which the bill related was settled out of court. He also claims that the respondent was not served with what he calls materials and pleadings in relation to the bill of costs. To the supporting affidavit, the respondent has attached copies of cheques, Mpesa transaction messages, Mpesa statement and bank deposit slips.
 5. The respondent's supporting affidavit does not indicate whether the applicant complied with the mandatory provision of paragraphs 11 (1) and (2) of the *Advocates Remuneration Order*. Under these paragraphs, a party who is aggrieved by a decision of the taxing officer is supposed to 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 objecting party must file the reference within fourteen days. None of the documents attached to the supporting affidavit or separately filed by the respondent suggests that the respondent filed a notice of objection.
 6. The ruling being challenged in this application was delivered on 22-03-2024. This application was filed on 17-04-2024 which is clearly outside the statutory period. There has been no application or a prayer for extension of time for filing the reference. The provisions in the aforesaid paragraphs of the *Advocates Remuneration Order* are mandatory and the respondent having failed to follow the laid down procedure erred in material away. Further I take the position 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. In this regard, the respondent's application dated 6th April 2024 is incompetent and I proceed to strike it out. The costs of the application which I assess at Kshs 5,000.00 are awarded to the applicant.
 7. I now turn to the applicant's application dated 15-05-2024. In its reply to the said application, the respondent avers that it made several payments amounting to Kshs 560,000.00 to the applicant in respect of the services it offered. It adds that the applicant had not taken into account the amount paid to it in the bill of costs or its application for entry of judgement. The respondent has exhibited copies of cheques, Mpesa transaction messages, Mpesa statement and bank deposit slips in proof of the payments it claims to have made.



8. The applicant has countered the respondent's claim of payment by stating that the issue of the alleged payments should have been introduced during the taxation and not at this stage. The applicant has added that the said payments were in respect of ten matters the applicant was handling under instructions of the respondent and not exclusively for the matter subject of this application. The applicant has submitted further that two of the other matters are subject of this court's Miscellaneous applications numbers 782 of 2024 and 786 of 2024 between the same parties.
9. I note that the applicant does not deny the above payment but only complains of the introduction of the issue at this stage. 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.
10. The above analysis leads me to inevitable conclusion that the applicant's application dated 15-05-2024 is merited and I proceed to grant the same in the following terms;
 1. Judgment is entered for the applicant against the respondent for a sum of Kshs 549,927.00.
 2. Subject to order (5) below the decretal sum shall attract interest at 14% per annum from 22-03-2024 until payment in full.
 3. The applicant is awarded costs of the application which I hereby assess at Kshs 5,000.00.
 4. 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.
 5. The interest awarded in (2) above shall only be applicable to the amount found owing after the accounts ordered (4) 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.

