



**KMK Law LLP v Global Trucks Limited (Miscellaneous Civil Application E786 of 2023)
[2024] KEHC 16715 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16715 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E786 OF 2023**

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

BETWEEN

KMK LAW LLP APPLICANT

AND

GLOBAL TRUCKS LIMITED RESPONDENT

RULING

1. This ruling is in respect of two applications. The first one is chamber summons dated 16th April 2024 filed by the respondent seeking to set aside the decision of the taxing officer dated 22nd March 2024. The application is opposed through a replying affidavit sworn by Muguro Irungu on 15-05-2024. The second application is a notice of motion dated 15-05-2024 by the applicant which seeks to have judgement entered against the respondent in terms of certificate of taxation dated 6th May 2024.
2. On 30-07-2024 Honourable Justice Alfred Mabeya ordered that the two applications be heard by way of written submission. Naturally the respondent's application for setting aside the taxation should be heard first as the applicant's application can only be considered if the decision of the taxing officer is allowed to stand.
3. The respondent filed submissions to its application on 21-08-2024 while the applicant filed theirs to the same application on 29-07-2024. Having read through the application, replying affidavit by Muguro Irungu aforesaid and submissions of the parties, I find that the respondent's application dated 16th April 2024 is fatally defective and incompetent making it a good candidate for striking out for the following two reasons;
 - a. The application is not supported by any affidavit. All that has been attached to the application are copies of cheques, Mpesa transaction messages, Mpesa statement and bank deposit slips ostensibly to prove that the respondent had paid fees and costs to the applicant. Even if I were



to take the said copies as evidence although they are not marked and do not make reference to any affidavit, they will still hold no probative value as far as the taxation is concerned. The purpose of taxation is to ascertain what the advocate is legally and rightfully entitled to have charged and not necessarily what is due to them. Actually, there are instances where bill of costs may be taxed at a lesser amount than what the client had paid in which case the advocate would be under an obligation to refund any excess. After taxation, the parties can take account to ascertain who owes who and how much. The fact that a client had paid legal fees or costs cannot in my view be a basis for setting aside taxation. It can only be taken as credit on the decretal sum once judgement is entered against the client.

- b. The application does not comply 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 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 otherwise known as reference within fourteen days. I have gone through the documents filed by the respondent and I have not seen a notice to that effect. The respondent has not told the court whether it complied with the said paragraph despite the applicant having raised it in its replying affidavit. The ruling the respondent is challenging was delivered on 22-03-2024. This application was filed on 17-04-2024 which is clearly outside the statutory period. The application has not prayed for extension of time for filing the reference. 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 *County Executive of Kisumu v County Government of Kisumu & 8 Others (2017) KESC 16 (KLR)* the Supreme Court of Kenya 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.’

4. In view of the above, I hereby strike out the application dated 16th April 2024 with costs to the applicant which I assess at Kshs 5,000.00 all inclusive.
5. On 30-07-2024, the court ordered that both applications be responded to within thirty days. Thereafter on 10-09-2024, the parties appeared before the Deputy Registrar and confirmed that they had filed submissions and asked for a judgement date. On 15-10-2024, the parties again confirmed having filed submissions and asked the court to give a ruling date. The court record does not show that the respondent filed any reply to the application dated 15th May 2024.
6. The applicant filed two sets of submissions in respect of its application. One set is dated 26th July 2024 and the second is dated 29th July 2024. The only submissions by the respondent in the applications before me are those dated 20th August 2024. The submissions are clearly in respect of the application which I have struck out. They say nothing about the application dated 15th May 2024. In the circumstances, the said application is not opposed. Having struck out the respondent’s application dated 16th April 2024, I see no impediment to the entry of judgment as per the certificate of taxation dated 6th May 2024. I therefore make the following orders.
- a. Judgment is entered for the applicant against the respondent for a sum of Kshs 696,435.00 with interest at 14% per annum from 22-03-2024 until payment in full.
- b. The applicant is awarded costs of the application which I hereby assess at Kshs 5,000.00.

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.

