



Ondaba and Partners Advocates v Sea Turtle Limited & another (Miscellaneous Application 284 of 2019) [2023] KEHC 27559 (KLR) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 27559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 284 OF 2019
F WANGARI, J
SEPTEMBER 29, 2023**

BETWEEN

ONDABA AND PARTNERS ADVOCATES APPLICANT

AND

SEA TURTLE LIMITED 1ST RESPONDENT

COLIN STUART 2ND RESPONDENT

RULING

1. The ruling is in respect to the Respondent's Chamber Summons dated 10/10/2022. The application seeks the following orders: -
 - a. That there be a stay of execution of the ruling delivered by the Taxing Master on 29th September 2022 and all other consequential process flowing from the ruling pending the hearing and determination of this reference.
 - b. The Taxing Master (Hon. Orora) ruling of 29th September 2022 be set aside.
 - c. The matter be referred back to the Taxing Master for reconsideration with appropriate guidance on instruction fee and fee for getting up or preparing for trial.
 - d. In the alternative, the court does exercise its inherent jurisdiction and be pleased to reconsider the items relating to instruction fee and getting up fees afresh.
 - e. The costs of this application be provided for.
2. Having been aggrieved by the above mentioned ruling, the Respondents brought this reference under Rule 11 (1) (2) of the Advocates (Remuneration) Order, 2009
3. Directions were given that the application be disposed of by way of written submissions.



Analysis and Determination

4. Before delving into the merits or demerits of the application, it must be satisfied that the Respondent being an aggrieved party, met the mandatory procedures before filing of this reference. Rule 11 of the Advocates (Remuneration) Order, 2009 provides as follows;

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- (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
5. In the case of *Del Monte Kenya Limited v Kenya National Chamber of Commerce and Industry (KNCCI) Murang'a Chapter & 2 others* [2021] eKLR, the court enunciated the procedure contemplated as hereunder;
- a. The aggrieved party issues a notice within 14 days on the items objected
 - b. The Taxing Officer shall forthwith give reasons for his decision
 - c. Upon receipt of the reason, the objector shall within 14 days file an application to the High Court setting out grounds for objection
 - d. If dissatisfied with the High Court, the objector shall with leave of court appeal to the Court of Appeal.
6. From the court records, the Respondent did not follow the mandatory procedure as provided for by Rule 11 as above. I am also alive to the court's holding in the case of *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Limited (2)* [2006] 1 EA 5 as hereunder;

“Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered



ruling...Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in substance, the same dismissed.”

7. I have perused through the ruling dated 29/9/2022. I find that the Respondent ought to have sought for an explanation of the decision made prior to filing of this reference.
8. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
 - a. The Chamber Summons dated 10/10/2022 is hereby struck out for non-compliance with the mandatory procedure under Rule 11 of the Advocates (Remuneration) Order.
 - b. The Respondent to comply with the mandatory procedure within the next 21 days.
 - c. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 29TH DAY OF SEPTEMBER, 2023.

F. WANGARI

JUDGE

In the presence of:

Wangari Advocate for the Applicant

Muriithi Advocate for the Respondent

Barile, Court Assistant

