



Oye Ashioya t/a Ashioya & Company, Advocates v Salome (Miscellaneous Civil Case E062 of 2022) [2023] KEHC 22712 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CIVIL CASE E062 OF 2022
WM MUSYOKA, J
SEPTEMBER 28, 2023**

BETWEEN

OYE ASHIOYA T/A ASHIOYA & COMPANY, ADVOCATES APPLICANT

AND

ELIZABETH KHASEKE SALOME RESPONDENT

RULING

1. What I am tasked with determining is a Motion, dated May 3, 2023, which challenges taxation of a bill of costs, dated October 27, 2022, vide a ruling that Hon. Tina Madowo, Deputy Registrar/Taxing Officer, delivered on April 18, 2023. The application seeks stay of execution for the taxed costs, review of the taxation orders, and re-taxation. Detailed grounds on which the Motion is premised are set out on the face of the application and in the supporting affidavit, sworn by Alex Masake, Advocate for the Respondent.
2. In response to the Motion, the applicant filed grounds of opposition, dated May 8, 2023, citing 1 principal ground, that a decision of a Deputy Registrar/Taxing Officer can only be challenged by way of a reference to the Judge.
3. Taxation of bills of costs/fees, as between Advocates and their clients, is governed by the Advocates (Remuneration) Order. The Order sets out schedules of fees to be charged, and the processes of taxation. It also provides for challenges to decisions, by taxing officers, on the taxation.
4. Rule 11 of the *Advocates (Remuneration) Order* sets out the framework for filing of challenges to a taxation by a taxing officer. The rule provides as follows:

“Objection to decision on taxation and appeal to Court of Appeal



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. The framework details the steps to be taken. It starts with Rule 11(1), by the party aggrieved, writing to the taxing officer, after the decision on taxation is rendered, giving notice of the items in the taxation that it objects to. Rule 11(2) then follows. Upon the taxing officer receiving the objection, he or she should record the reasons for the decision on the items objected to, and forward the record of the reasons to the objecting party. Should the objector not be satisfied with the reasons given, there is liberty, within 14 days, to apply to the Judge, by way of what is popularly known as reference, for review or setting aside or whatever, of the decision of the taxing officer on the items objected to. Rule 11(3) kicks in where the Judge renders a decision on the reference, which aggrieves any of the parties, such aggrieved party has a right of appeal, under rule 11(3) to the Court of Appeal, with leave of the Judge. Rule 11(4) empowers the High Court to expand the timelines set in rule 11(1)(2).
6. Litigation under Rule 11 is progressive. It goes step by step. It starts with the step under rule 11(1), followed by Rule 11(2), and then rule 11(3). Consequently, there can be no reference to the Judge of the High Court without the reasons given by the taxing officer, and the taxing officer cannot give reasons unless prompted under rule 11(1). It is the objection to the taxing officer which triggers the reference, much the same way that the decision of the Judge on the reference triggers the appeal to the Court of Appeal. A reference cannot be mounted under rule 11(2), by way of jumping the step in rule 11(1).
7. The jurisdiction granted to me, under rule 11, is to entertain a reference from the decision from the Deputy Registrar/Taxing Officer, filed following the process that I have detailed above. What is before me is not a proper reference, as the processes, set out in rule 11, have not been followed. Parties often cite article 159 of the *Constitution* to override such processes, but rule 11 is also about jurisdiction, meaning that those processes are more than technicalities of procedure. Rule 11(2) gives the Judge jurisdiction to deal with a challenge to a decision of the Deputy Registrar/Taxing Officer. I can only assume that jurisdiction upon the processes in rule 11(1) being complied with. Rule 11(1) has not been complied with, in this case, so the jurisdiction to review the decision of the Deputy Registrar/Taxing Officer, dated April 18, 2023, has not yet accrued, and I, therefore, have no jurisdiction to entertain any challenge to that decision.



8. The motion, dated May 3, 2023, is not properly before me, for the reasons given. It is for striking out, and I hereby strike it out, with costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 28TH DAY OF SEPTEMBER 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the applicant.

Mr. Masake, instructed by Shaban Associates LLP, Advocates for the respondent.

