



Kaylan Tours & Travel Limited v Nzioki Muthini Advocates (Miscellaneous Civil Application E154 of 2021) [2022] KEHC 13029 (KLR) (Civ) (23 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E154 OF 2021**

JK SERGON, J

SEPTEMBER 23, 2022

BETWEEN

KAYLAN TOURS & TRAVEL LIMITED APPLICANT

AND

NZIOKI MUTHINI ADVOCATES RESPONDENT

RULING

1. This ruling is the product of the notice of motion dated May 11, 2022 brought by the respondent/ applicant ('the applicant') and supported by the grounds laid out on its face and the facts stated in the affidavit of Victor Morris Muli, and sought for the orders hereunder:
 - i. Spent.
 - ii. That this honourable court be pleased to set aside and/or vary the judgment entered on March 21, 2022 for the respondent together with the consequential decree of April 11, 2022 and warrant of attachment orders of the court as this honourable court may deem fit and just.
 - iii. Spent.
 - iv. That costs of the application be provided for.
2. The motion was opposed by the applicant/respondent ('the respondent') through the replying affidavit sworn by Nzioki Muthini advocate, on June 20, 2022.
3. This court gave directions to the parties to put in written submissions on the motion. At the time of writing this ruling, it is noted that only the submissions by the respondent were made available for this court's perusal and reference.



4. I have considered the grounds set out on the face of the Motion; the facts deponed in the affidavits supporting and opposing the motion; and the submissions on record.
5. A brief background of the matter is that the respondent acted for the applicant at all material times in HCCA No 148 of 2019, following which the former filed the advocate-client bill of costs dated March 19, 2021 and sought for the total sum of Kshs 491,745/=.
6. The bill of costs proceeded for taxation and was taxed by the taxing master at the sum of Kshs 255,334.10 vide the ruling delivered on October 14, 2021 and a certificate of taxation was subsequently issued on November 16, 2021.
7. The record shows that the respondent thereafter applied for the entry of judgment pursuant to the certificate of taxation and which application upon being placed before this court, was granted on March 21, 2022 and a decree was issued on April 11, 2022.
8. It is the aforesaid judgment that the applicant now seeks to vary and set aside.
9. In his affidavit in support of the motion, Victor Morris Muli states that no notice of entry of judgment was served upon the applicant and that the respondent has commenced the execution process against the applicant in the sum of Kshs 276,217.10 whereas the latter had previously paid the former's legal fees to the tune of Kshs 493,780/= which is in excess of the sum sought.
10. The deponent further states that the taxing master in her ruling assessed the value of the subject matter at the sum of Kshs 155,110/= whereas the same ought to have been assessed at the sum of Kshs 100,000/= under the head of instruction fees.
11. For the foregoing reasons, the deponent asserts that the taxation ruling and judgment entered against the applicant are irregular and ought to be set aside.
12. In reply, the respondent both states and submits that the applicant was at all material times aware of the taxation proceedings but did not participate in the same or file any response.
13. The respondent also states and submits that the applicant ought to have followed the proper procedure for challenging taxation proceedings, by filing a reference and hence the instant motion is a non-starter and ought to be dismissed with costs.
14. It is similarly the submission by the respondent that execution of the decree arising out of the taxation proceedings is well within its legal rights and hence there is no reasonable basis for challenging the execution process.
15. Upon my study of the record and as earlier noted, the parties herein were engaged in taxation proceedings which culminated in a ruling on taxation and a consequent judgment and decree, pursuant to the issuance of a certificate of taxation.
16. Upon my further study of the record, I note that the applicant; who was at all material times represented by his counsel; were at all material times made aware as to the court dates but did not attend court on a consistent basis or put in a response to the advocate-client bill of costs despite being given an opportunity to do so.
17. Moreover, I also note that following the taxation ruling, the respondent did not make any effort to have the certificate of taxation set aside, thereby resulting in entry of judgment upon the request by the respondent.



18. Paragraph 11 of the *Advocates Remuneration Order* cited in the submissions by the respondent, provides for the procedure for objecting to a decision on taxation and on the filing of a reference, as follows:

' (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 subparagraph (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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(5) 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.'

19. From the foregoing, it is clear that the proper procedure for challenging a decision on taxation is by filing a reference and hence the applicant herein ought to have filed a reference to dispute the ruling by the taxing master and/or the certificate of taxation, but did not.

20. In the absence of any reference, it is clear that the certificate of taxation and entry of judgment are valid.

21. In view of all the foregoing factors, I am of the view that no credible basis has been laid to vary and/or set aside the subject judgment at this stage.

22. In the end therefore, the notice of motion dated May 11, 2022 is hereby dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

.....

JK SERGON

JUDGE

In the presence of:

..... for the Applicant/Respondent

..... for the Respondent/Applicant

