



Makhecha & Gitonga Advocates v Standard Group PLC (Civil Miscellaneous Application E354 of 2020 & Miscellaneous Civil Application 180 & E352 of 2020 (Consolidated)) [2022] KEHC 13057 (KLR) (Civ) (23 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13057 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E354 OF 2020 & MISCELLANEOUS CIVIL APPLICATION 180 & E352 OF 2020 (CONSOLIDATED)

JK SERGON, J
SEPTEMBER 23, 2022

BETWEEN

MAKHECHA & GITONGA ADVOCATES APPLICANT

AND

STANDARD GROUP PLC RESPONDENT

RULING

1. The advocate/applicant in all three (3) instances has filed the Chamber Summons references (“the references”) dated August 24, 2021 and August 27, 2021 respectively. The respective summons are supported by the grounds set out on their face and the facts stated in the affidavits of advocate Wangeci Mwangi and sought for the following orders:
 - i. That the taxation be varied or set aside.
 - ii. That cost of the reference be borne by the client/respondent.
2. The respondent in all three (3) instances put in the replying affidavit sworn by Millicent Ng’etich on October 25, 2021 to resist the references.
3. At the *interparties* hearing of the references, the parties’ advocates presented brief oral arguments.
4. I have considered the grounds set out on the body of the respective references; the facts deponed in the affidavits filed in support thereof; the replying affidavits and the oral arguments made.



5. In the respective matters, the applicant filed the advocate-client bill of costs and sought for varying sums of money arising out of defamation claims in which the applicant acted for the respondent as a defendant at all material times.
6. The respective bill of costs were placed before the taxing officer and taxed as follows:
 - a. Misc Application no E352 of 2020-kshs 310,372/=
 - b. Misc Application no E180 of 2020-kshs 247,516.34
 - c. Misc Application no E354 of 2020-kshs 376,445/=
7. Returning to the references, before I consider their merits, I will address a concern which was raised by the respondent; which is whether the references are time barred.
8. In her respective replying affidavits, Millicent Ng'etich states on behalf of the respondent that the references ought to be struck out for being time barred and incompetent, the same having been filed outside of the stipulated timelines from the date of receiving the ruling on taxation and reasons therefore.
9. Paragraph 11 of the *Advocates Remuneration Order* provides for the procedure for objecting to a decision on taxation and on the filing of a reference, as seen hereunder:
 - “(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.
10. Upon my study of the record, I note that the rulings containing the reasons for taxation were delivered as follows:
 - a. Misc Application no E352 of 2020-June 24, 2021
 - b. Misc Application no E180 of 2020-July 8, 2021
 - c. Misc Application no E354 of 2020-April 14th April, 2021
11. Going by the record, while it is apparent that the applicant wrote to the deputy registrar indicating its intention to object to the items in the taxation ruling, as noted above it is apparent that the reasons thereof were contained in the ruling and hence there was no need to apply for the same.
12. From the legal provisions above, the applicant ought to have filed its references within 14 days but it did not comply. There is also nothing to indicate that the applicant first sought leave of the court to file the respective references out of time.
13. Consequently, I am convinced that the references are time barred and there is no reason for me to consider their merits.
14. The upshot therefore is that the Chamber Summons reference dated August 27, 2021 in Misc Civil Application no E354 of 2020 is hereby struck out with no order as to costs. The aforementioned orders



shall apply to Misc Civil Application no E352 of 2020 and Misc Civil Application no 180 of 2020 accordingly.

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

.....

J K SERGON

JUDGE

In the presence of:

..... **for the advocate/applicant**

..... **for the client/respondent**

