



Republic v Commissioner for Co-operative Development & 3 others; Nguku (Exparte); Umoja Wendani Sacco Society Ltd (Interested Party) (Application 71 of 2019) [2022] KEHC 18086 (KLR) (Judicial Review) (28 October 2022) (Ruling)

Neutral citation: [2022] KEHC 18086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION 71 OF 2019
J NGAAH, J
OCTOBER 28, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

**COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT ... 1ST RESPONDENT
DIRECTOR OF CO-OPERATIVES 2ND RESPONDENT
SUB COUNTY CO-OPERATIVE OFFICER EMBAKASI 3RD RESPONDENT
NAIROBI CITY COUNTY 4TH RESPONDENT**

AND

KINYUA MAINA NGUKU EXPARTE

AND

UMOJA WENDANI SACCO SOCIETY LTD INTERESTED PARTY

RULING

1. The applicant’s application is dated September 23, 2019. It is brought under paragraph 11 (2) of the *Advocates Remuneration Order, 2014*.
2. The primary prayers for which the application is filed have been framed as follows:
 - b) that this honourable court be pleased to vacate, set aside and or vary in its entirety the ruling of Honourable L.A Mumassaba deputy registrar dated and delivered on August 28, 2019 taxing



party and party bill of costs dated June 18, 2019 at Kenya shillings four hundred and thirty nine thousand three hundred, the taxing master's decision and certificate of taxation.

- c) That the honourable court enlarges time within which to file a reference against the decision of the taxing officer delivered on August 28, 2019.
 - d) That the reference filed herein be deemed as properly filed out of time.
 - e) that the bill of costs be taxed afresh.”
3. The application is supported by the affidavit of Kinyua Maina Nguku sworn on September 23, 2019. Mr Nguku has sworn that on August 28, 2019, the bill of costs dated June 11, 2019 was purportedly served on him.
 4. The ruling of the taxing master was given on August 28, 2019, on the same day the bill of costs came up for taxation.
 5. The applicant is dissatisfied with the ruling and wants the taxation done afresh.
 6. The applicant has also sworn that the taxing master awarded “very high and unrealistic charges particularly on instruction fees”.
 7. The interested party has opposed the application and filed grounds of opposition dated October 24, 2019. It contends that the motion is frivolous, vexatious and an abuse of the process of this honourable court and the applicant's main intention is to deny the interested party its costs.
 8. The application is said also to be bad in law as it defies the provisions of the law in particular paragraph 11 (2) of the [*Advocates Remuneration Order 2014*](#).
 9. I have had occasion to read the impugned ruling. It is dated August 28, 2019 and it is captioned “ruling and reasons for taxation on the *ex parte* applicant's party and party bill of costs dated June 11, 2019.”
 10. The applicant has not disputed that the notice of taxation was served as deposed in the affidavit of the process server, Sammy K. Waweru. A copy of the affidavit of service has been exhibited to the applicant's own affidavit in support of the application and marked as “KMNI”.
 11. If the notice was served, the reasons why the applicant or his representative did not attend the taxation proceedings have not been given.
 12. It follows that there is no material upon which this honourable court can exercise its discretion and extend time to file a reference under paragraph 11(2) of the [*Remuneration Order*](#).
 13. In any event, assuming that the reference filed by the applicant was to be deemed to be duly filed, the basis of the applicant's grievances against the taxation is not clearly spelt out. He has sworn as follows:
 4. That I have read the said contested ruling and being dissatisfied of (sic) in its entirety hence this application for reverence(sic) seeking the ruling of the taxing master be set aside and the bill dated June 11, 2019 be taxed afresh”.
 6. That I am advised by my advocate on record which advise (sic) I verily belief (sic) to be true that the taxing master made an error by failing to consider principles governing taxation particularly instruction fees.
 7. That the taxing master proceeded on wrong principles hence awarded very high and unrealistic charges particularly on the instruction fees.”



14. It is not enough to make a rather general statement that the applicant is not satisfied with the taxing master ruling ‘in its entirety’. Neither is it enough to simply allege that the taxing master failed to consider principles governing taxation and awarded “*high and unrealistic charges*” without stating what these principles are and how the taxing master has failed to apply them.
15. The court will also not accept a blanket statement that the instruction fees is high or unrealistic without the applicant demonstrating that the taxed amount is inconsistent with the scale provided by the [Remuneration Order](#) or that under that scale, there is no justification for the award made by the taxing master.
16. Be that as it may, I have already held that no reason was given why the applicant or his representative did not attend the taxation proceedings and by extension why the applicant could not file the reference within the prescribed timeliness. These timelines are prescribed in rule 11(1) and (2) of the [Remuneration Order](#); it reads as follows:
 - (1) should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of the 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 14 days from the receipt of the reasons apply to a judge by a chamber summons which shall be served on all the parties concerned setting out the grounds of his objection.
17. It is apparent from these provisions that a notice objecting to the taxation would ordinarily precede the reference which applicant wants this honourable court to deem as duly filed.
18. In the impugned ruling, the taxing master gave reasons for her decision and, therefore, unless the notice objecting to the taxation served any other purpose than that of provoking the taxing master to give reasons for taxation, it might not have been necessary and nothing much would turn on it if the applicant’s application was to be deemed as duly filed. I say so because it is only on those items identified in the notice that the taxing master would be bound to give reasons for taxing them as he or she did.
19. What I gather from the impugned ruling is that the taxing master gave her reasons for taxation on all the items and therefore the purpose for which the notice to object was required under rule 11(1) had been served. Since the reasons for the taxation of all the items had been given, the notice objecting to the taxation and asking for the reasons for taxation would be rendered superfluous in the circumstances.
20. If a taxation of a bill of costs is in accordance with [Remuneration Order](#), it will not be set aside merely because any of the parties in the suit in which the bill of costs has been filed did not attend the proceedings.
21. In the instant application, I have already noted that the court has, in any event, not been presented with any material upon which it can exercise its discretion and extend time to file the reference under paragraph 11(4) of the [Remuneration Order](#).
22. For the reasons given the applicant’s application is dismissed. Parties will bear their respective costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 28 OCTOBER 2022

Ngaah Jairus

JUDGE

