



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karuturi & another v CFC Stanbic Bank Limited & 4 others (Civil Case 251 of 2017)  
[2022] KEHC 16894 (KLR) (Commercial and Tax) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16894 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 251 OF 2017  
DAS MAJANJA, J  
DECEMBER 21, 2022**

**BETWEEN**

**ANITHA KARUTURI ..... 1<sup>ST</sup> PLAINTIFF  
SAI RAMAKRISHNA KARUTURI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CFC STANBIC BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT  
ICICI BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT  
IAN SMALL ..... 3<sup>RD</sup> DEFENDANT  
KIERIAN DAY ..... 4<sup>TH</sup> DEFENDANT  
KOLLURI VENTAKA SUBBARAYA KAMASASTRY ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiffs have moved to this court by the chamber summons dated August 22, 2022 filed, *inter alia*, under paragraph 11 of the *Advocates Remuneration Order* (“the order”) seeking to set aside the decision of the Deputy Registrar dated July 29, 2022 awarding the 1<sup>st</sup> respondent Kshs 10,059,110.00, the 2<sup>nd</sup> respondent Kshs 10,000,000.00 and the 5<sup>th</sup> respondent Kshs 10,110,740.00 as taxed costs and that the bill of costs dated January 7, 2022 and February 28, 2022 be taxed afresh (“the reference”).
2. Prior to the taxation of the party and party bill of costs, the court delivered its ruling dated October 23, 2017 directing that the plaintiffs to provide security amounting to Kshs 10,000,000.00 within 60 days. The plaintiffs failed to comply with the court order resulting in the suit being struck out with costs hence the taxation.



3. The reference was supported by the affidavit of Sai Ramakrishna Karuturi, the 2<sup>nd</sup> appellant, sworn on August 22, 2022. The 1<sup>st</sup> respondent opposed the reference by the grounds of opposition dated September 27, 2022 raising the ground that the reference was not filed within the mandatory 14-day period provided under the order. The 2<sup>nd</sup> and 5<sup>th</sup> respondents also filed a replying affidavit sworn on October 7, 2022 by their counsel, Jomo Nyaribo, opposing the reference on similar and other grounds.
4. I have considered the arguments presented by the parties in their written submissions and since the competence of the reference is impugned, it is an issue I have to dispose of first.
5. It is trite law that the period of limitation for filing a reference is 14 days from the time when the reasons for the ruling by the Deputy Registrar are given. In the case the ruling contained the reasons for the ruling which obviated the requirement by the plaintiff to apply for reasons (see *Mumias Sugar Company Limited v Professor Tom Ojienda and Associates* KSM HC Misc No 279 of 2017 [2018] eKLR). The respondents' case is the plaintiffs filed the reference ten days late, without seeking leave of the court and also without demonstrating the date of receipt of the reasons. Paragraph 11 of the *order* provides as follows:
  - 11 (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.
6. The aforesaid provisions have been the subject of comment in various cases. In *Nyakundi & Company Advocates v Kenyatta National Hospital Board* [2005] eKLR, the court held as follows:

Under rule 11 (2) of the *Advocates (Remuneration) Order* quoted above, a definite time frame for filing a reference is given. It is fourteen (14) days from the receipt of the reasons. If an objector is delayed in making his/her reference he/she may apply for enlargement of time to make the reference under rule 11(4) of the same order.

Similarly in *Twiga Motor Limited v Hon Dalmas Otieno Anyango* [2015]eKLR the court observed that:

The time limits in rule 11 of the *Advocates Remuneration Order* have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.
7. The ruling by Deputy Registrar, appropriately titled, "ruling and reason for the decision" was rendered on July 29, 2022. Upon delivery, the plaintiff was well equipped to file this reference without seeking any reasons as the ruling itself contained the reasons. The plaintiffs did not file this reference until August 22, 2022 when the time limited for filing had expired without leave of the court.
8. The inevitable conclusion is that the reference is incompetent for the reasons I have outlined above. It is therefore struck out with cost which are assessed as follows; Kshs 10,000.00 to the 1<sup>st</sup> respondent and Kshs 10,000.00 to the 2<sup>nd</sup> and 5<sup>th</sup> respondents to be paid within 14 days from the date hereof.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF DECEMBER, 2022.**

**D. S. MAJANJA**



## **JUDGE**

Court Assistant: Mr M. Onyango

Mr Owino instructed by Chris Davids and Company Advocates for the Plaintiff.

Mr Ogunde instructed by Walker Kontos Advocates for the 1<sup>st</sup> Defendant.

Mr Nyaribo instructed by Muthaura Mugambi Ayugi and Njonjo Advocates for the 2<sup>nd</sup> and 5<sup>th</sup> Defendants.

