



**Ngoge t/a OP Ngonge & Associates v Kenya Koch Light Industries
Limited & another (Miscellaneous Application 41 of 2021)
[2023] KEELC 20118 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20118 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
MISCELLANEOUS APPLICATION 41 OF 2021
A OMBWAYO, J
SEPTEMBER 28, 2023**

BETWEEN

PETER O NGOGE T/A OP NGONGE & ASSOCIATES APPLICANT

AND

KENYA KOCH LIGHT INDUSTRIES LIMITED 1ST RESPONDENT

REKHAVANTI PANKAJ SHAH 2ND RESPONDENT

RULING

Brief Facts

1. The applicant filed the instant application dated May 10, 2023 seeking the following orders:
 1. That leave be granted to the applicant herein to lodge an application seeking to review/set aside the ruling delivered by the taxing officer/deputy registrar on September 22, 2022 out of the time limited by rule 11 of the *Advocates Remuneration Order* and rules made thereunder.
 2. That further in the alternative the ruling delivered by the deputy registrar/taxing officer herein on the September 22, 2022 be reviewed and set aside.
 3. That a declaration that the deputy registrar of this honourable court has got jurisdiction to tax the advocate-client bill of costs herein arising from the legal services rendered by the applicant/advocate to the respondents herein in the Court of Appeal; being Nakuru civil appeal No E005 of 2020.
 4. That the applicant/advocate bill of costs herein be taxed against the respondents before a different taxing officer/deputy registrar of this honourable court.
 5. That the costs of this application be provided by the respondents herein.



2. The application was based on grounds set out and supported by the affidavit of Peter O. Ngonge sworn on May 10, 2023. He stated that he applied for a copy of the impugned ruling which upon assessment by the office of the Deputy Registrar he was supplied with and that the said ruling contained reasons dismissing his bill of costs.
3. It was further stated that the impugned ruling was incompetent and lacked the legal basis under the [Advocates Remuneration Order](#) and the rules made thereunder.
4. He added that the said ruling curtailed his socio-economic rights as an advocate contrary to article 16 of the [United Nations Basic Principles](#) on the role of lawyers. In conclusion, the applicant urged this court in the interest of justice to allow the present application.

Response

5. The 2nd respondent filed his replying affidavit dated June 29, 2023. He stated that the application is an abuse of the court process as the same has been disguised as an appeal/review yet it is an attack on the character of a judicial officer.
6. He stated that the applicant did not cite any specific law provisions that gave the Deputy Registrar the jurisdiction to tax bills from the Court of Appeal. He further stated that the ruling delivered was well reasoned devoid of malice and ought to be allowed to stand. In conclusion, he urged the court to dismiss the instant application with costs. The 1st respondent did not file any response.

Submissions

7. Both parties did not file any submissions.

Analysis and Determination

8. This court has perused the application and is of the view that the main issue for determination is whether the applicant is entitled to the orders being sought. The applicant herein seeks various orders among them to have the ruling issued by the Deputy Registrar on September 22, 2022 reviewed and set aside. I have carefully perused the court record and I find that the Deputy Registrar vide its ruling stated that she did not have the requisite jurisdiction to tax bills arising from the Court of Appeal. Order 45 rule 1 provides for the review of a decree or order as follows:

- “(1) Any person considering himself aggrieved: -
- a) By a decree or order from which an appeal is allowed but from which no appeal has been preferred or
 - b) By a decree or order from which no appeal is hereby allowed, and from whom the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of the judgment to the court which passed the decree or made the order without unreasonable delay.” [Emphasis mine]



Further, section 80 of the *Civil Procedure Act* provides as follows:

“ Any person who considers himself aggrieved-

- a) By a decree or order in which an appeal allowed by this Act, but from which no appeal has
- b) By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

9. In the instant case, the applicant seeks review of a ruling made by the Deputy Registrar, yet it has filed the same in this court. This court is of the view that it is trite law that review ought to be made before the court that passed the order, in this case the Deputy Registrar’s court.
10. I also note that the Deputy Registrar after acknowledging that it did not have the requisite jurisdiction to tax bills arising from the Court of Appeal, she further dismissed the bill. It is this court’s view that the same was rather erroneous since when it lacked jurisdiction, it could only down its tools but not make any further pronouncements.
11. I therefore find that for the sole reason that the Deputy Registrar went further and dismissed the bill of costs, it warrants this court’s interference. This court appreciates that the Court of Appeal has its own Deputy Registrar who hears tax bills arising from the Court of Appeal. In the upshot, the application dated May 10, 2023 is hereby allowed in terms of prayer (2) and is substituted with an order that the bill be struck out for want of jurisdiction. Each party shall bear its own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH, DAY OF SEPTEMBER 2023.

A.O.OMBWAYO

JUDGE

