



KTK Advocates v Nairobi City County (Miscellaneous Cause E056 of 2020) [2023] KEELC 20297 (KLR) (21 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20297 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS CAUSE E056 OF 2020
OA ANGOTE, J
SEPTEMBER 21, 2023**

BETWEEN

KTK ADVOCATES ADVOCATE

AND

NAIROBI CITY COUNTY CLIENT

RULING

1. This Ruling is in respect of the applications dated 10th May, 2022 and 8th August, 2022. In the application dated 10th May, 2022 and filed by the firm of Miller & Co. Advocates, who act for the Client/Applicant herein, on 5th July, 2022. The Client has sought for the following orders:
 - a. That the decision of the Taxing Master delivered on 10th May, 2022 in so far as the same relates to the reasoning and determination pertaining to taxation of the Bill of Costs dated 1st October, 2022 be set aside.
 - b. That the honourable court be pleased to refer the matter back for re-taxation of the bill of costs with proper directions thereof.
 - c. That in the alternative to prayer 2 above, the honourable court exercise its inherent jurisdiction and be pleased to re-asses and re-tax the bill of costs dated 1st October, 2020 afresh and/or make such other or further orders as regards the bill of costs in issue.
 - d. That further and in the alternative to prayer 2, the honourable court be pleased to order a settlement of accounts once this court is satisfied that the Advocate/Respondent was paid a substantial sum in legal fees by the Client/Applicant.
 - e. That the costs of this Application be provided for.
2. The basis of the reference is in the grounds set out in the Chamber Summons itself, and the Supporting Affidavit of the Client/Applicant’s County Attorney, Eric Abwao, sworn on 10th day of May, 2022,



- who deponed that the amount taxed by the Taxing Officer being KShs. 1,338,011,582.76/- does not coincide with those provided in the Advocates Remuneration Order (2014).
3. It was deponed by the Client's Attorney that the Taxing Master failed to consider the Client/Applicant's Pleadings on record and consequently made serious errors of principle in taxing the Bill of Costs, by failing to consider relevant matters thus arriving at a wrong decision; that the Taxing Master erred in law and in fact in awarding the amount of KShs. 1,338,011,582.76 and that the Taxing Master ought to have considered the Client/Applicant's submissions on the Bill of Costs that raised pertinent issues of law.
 4. According to the Client's Attorney, the Taxing Master ought to have considered the existence of a retainer agreement under which the Advocate was paid the first two instalments; that the amount paid to the Advocate /Respondent was KShs. 100,000,000, paid on 13th of August, 2020 and Kshs. 10,000,000 paid on 3rd July, 2018 and that they had attached to their list of documents in the taxation evidence that the Advocate had agreed to discount his fees to Kshs. 400 Million.
 5. The Advocate/Respondent opposed the reference by way of a Replying Affidavit sworn by Donald B. Kipkorir, in which he deponed that they filed the Bill of Costs on 5th October, 2020 and served it together with the Taxation Notice dated 19th October, 2020; that the Bill of Costs was taxed on 10th May, 2022; that they were served with the current application without the court receipt; that they logged into the Court's e-filing Portal and printed the Case Activities Register, and that the only application filed by the Client/Applicant was on 5th July, 2022, which he deduces is the current application.
 6. According to the Advocate, it is not practical that the application was filed on the same day the Ruling was delivered; that it is established law that pleadings or any document that requires payment of court fees is void if filed without such fees; that in any event, the Client/Applicant's Advocate had not complied with Section 11(2) of the Advocates Remuneration Order and finally, that the reference did not demonstrate any factual or legal basis to set aside the Ruling delivered on 10th May, 2022.
 7. To this, The Client's Attorney filed a "Further Replying Affidavit" explaining that the Chamber Summons application was drafted and dated 10th May, 2022 and given to the Client who proceeded to sign it but held on to it pending deliberations within the county of possible amendments; that the application was lodged and paid for on 4th July, 2022 and that the receipt annexed on the Advocate's Replying Affidavit as "DBK-5 was issued.
 8. The Advocate also filed and placed before the court a Notice of Motion application dated 8th August, 2022 in which they have sought for the following orders:
 - a. That Judgment be entered against the Client/Respondent in the sum of KShs. 1,338,011,582.76 plus interest at 14%p.a from 10th May, 2022 until payment in full.
 - b. That costs for this Application and all other incidental costs be provided for.
 9. The grounds on the face of the Motion as well as the Supporting Affidavit of Donald B. Kipkorir are that the costs arose from Nairobi ELC No. 282 of 2012 filed on instructions of the Client/Applicant who was seeking vacant possession of the suit property L.R. No. 11344; that they drafted pleadings, conducted pre-trial, discovery, interrogatories and full hearing and that the Bill of Costs dated 1st October, 2020 was taxed on 10th May, 2022 in the above-mentioned sum.
 10. The Client filed a brief Replying Affidavit sworn on 19th January, 2023 by one Eric Mugo, the Advocate having conduct of the matter, to the effect that they had filed a Reference vide the Chamber Summons



dated 10th May, 2022 and that it was necessary for good order that the same be heard first before the court could hear the Advocate's Notice of Motion of 8th August, 2022. Both parties filed submissions and authorities which I have considered.

Analysis and determination

11. Having considered the two applications, the Affidavits filed by the parties as well as the rival submissions filed herein, the issues that arise for determination are as follows:
 - a. Whether the reference is competent and properly before the court;
 - b. If so, whether the objector has demonstrated satisfactory grounds for this court's interference with the decision of the taxing officer; and
 - c. Whether the Advocate/Respondent is entitled to the prayers sought in the Notice of Motion dated 8th August, 2022.
12. The law regarding taxation of Bills Costs where costs are awarded by the Court is the Advocates Remuneration Order, 2014. Rule 11 (1) and (2) of the Order provides 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 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 sub-paragraph (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) 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.”
13. After the Taxing Master makes a finding on what is due to a party, the parties will either agree with the taxation or object to it. In case the parties agree, then execution ensues and payment shall be due. This can only be ascertained after the end of 14 days of the delivery of the decision or up to the time when an aggrieved party writes to the Taxing Master intimating that they wish to be given reasons for the taxation of certain or all items, whichever is earlier.
14. There is no doubt therefore that the lodging of an objection must be done in writing within 14 days of the decision of the Taxing Master. The aggrieved party is required to list the specific items in issue and ask the Taxing Master to give reasons for the decision. Upon receipt of the notice, the Taxing Master is under a duty to give the aggrieved party the reasons for the taxation.



15. In terms of Rule 11(2) of the Order, if upon receiving the reasons the aggrieved party still disagrees with the Taxing Master, they are then obligated to file a reference to a judge, setting out the grounds of the objection. This must be done within fourteen (14) days upon receipt of the reasons from the Taxing Officer.
16. In the current suit, the Bill of Costs was filed on 5th October, 2020 and was taxed on 10th day of May, 2022. The Chamber Summons subject of the Reference, although dated 10th May, 2022 as per the Client/Applicant's Further Reply, was filed on 5th day of July 2022.
17. The Advocate/Respondent has annexed to his Replying Affidavit the Case Activities from the E-filing Portal showing that indeed the application was not filed on 10th day of May 2022. The receipt annexed by the Respondent is dated 5th July, 2022 but a closer look shows the payment was made on the 4th of July, 2022, lending credence to the Client/Applicant's contention that the said Application was filed on 5th of July, 2022.
18. Indeed, this court has confirmed from the CTS portal that the current application (Reference) was filed by the Client, Nairobi City County Government, on 5th of July, 2022, which is the same date that the Client made a payment of Kshs. 1,500. The filing of the Chamber Summons dated 10th May, 2022 was filed a whole fifty-five (55) days after the delivery of the Ruling by the Taxing Master, which is way out of the prescribed time of 14 days from the date of the Ruling.
19. The provision of the law that the court could extend time for an aggrieved party to file a notice of objection and/or to file a reference outside the stipulated periods is set out at Rule 11 (1) and (2) of the *Advocates Remuneration Order* as set out above. However, the Client/Applicant's counsel did not see fit to seek for enlargement of time for bringing the Reference, and instead went ahead to file the Reference dated 10th May, 2022 on 5th July, 2022 without the leave of the court to do so.
20. The Reference having been filed out of time without the leave of court to enlarge or extend time for filing of the same is incompetent. Although Rule 11(4) gives the court discretion to extend time for filing of the Reference out of time, one thing is clear: the Client never sought for leave to extend or enlarge time for filing of the Reference, and even after filing the Reference out of time, did not seek an order for enlargement of time.
21. Further, even if this court were to exercise its discretion and extend the time on its own motion, which is not permissible under the law, no single reason has been given for the delay in filing the Reference within the prescribed time.
22. In the case of *Independent Electoral and Boundaries Commission vs John Omollo t/a Ganijee & Sons* [2021] eKLR, it was held as follows:

“As for whether or not the court can extend the time for filing a Reference against the Taxing Master's decision, I wish to state that it is a principle of Law that the applicant must demonstrate good and sufficient reasons as to why he or she was unable to bring the Reference within the set period as provided for under Paragraph 11 of the Advocates Remuneration Order which is fourteen days from the delivery of the Taxing Master's reasons for the decision as delivered.”
23. The only attempt that was made by the Client's Attorney to explain the delay in filing the Reference, which notably was given after the Respondent/Advocate raised the issue of lapse of time, is that “one Mr. Erick Abwao, a County Attorney of the Client, received the draft Chamber Summons application



on the same date the Ruling was delivered, signed it on the same date, but held on to it for deliberations within the County on whether the application needed amendments.”

24. With all due respect, the said Eric Abwao, being an Attorney, must have been aware of the implications as to timelines for filing of pleadings, and should have been the one to advise the Client on the consequences of failure to adhere to the timelines. It is baffling that the Nairobi City County Government’s Attorney would ‘sit’ on the application dated 10th May, 2022 for almost two months, noting the colossal amount of money involved which is over Kshs. 1.3 billion, to be paid by the tax payer to the Advocate.
25. The other issue that the Client should interrogate is why its advocate did not comply with the provisions of Order 11 of the Advocates Remuneration Order, 2014, in so far as seeking for the leave of the court for enlargement of time is concerned. Was this omission intentional? These grave questions, in my view, should be brought to the attention of the Governor of the Nairobi City County Government for answers from his Attorneys, if any, considering the amount of money (over Kshs 1.3 billion) involved herein.
26. Considering that the Chamber Summons dated 10th May, 2022 was filed on 4th July, 2022, which was out of time, and the same being incompetent, I decline to consider the merits of the application. Consequently, I proceed to make the following orders:
 - a. The application dated 10th May, 2022 and filed on 4th July, 2022 by the Client is hereby struck out with costs.
 - b. The application dated 8th August, 2022 by the Advocate is allowed as prayed.
 - c. This Ruling to be served by the process server of this court on the Governor of Nairobi City County Government personally.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 21ST DAY OF SEPTEMBER, 2023.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Kipkorir for Advocate

Mr. Mugo for Client

Court Assistant - Tracy

