



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISC. CIVIL APPL. CASE NO. 530 OF 2013

MWANGI KENG'ARA & CO. ADVOCATES ::::: ADVOCATE/RESPONDENT

VERSUS

UPWARD SCALE INVESTMENTS CO. LTD. ::::: 1ST CLIENT/APPLICANT

LINMERX HOLDINGS LIMITED ::::::::::::::: 2ND CLIENT/APPLICANT

RICHHOOD LIMITED ::::::::::::::: 3RD CLIENT/APPLICANT

GEOMAX CONSULTING ENGINEERS LTD. ::::: 4TH CLIENT/APPLICANT

GATH CONSULTING ENGINEERS LTD. ::::::: 5TH CLIENT/APPLICANT

JAMES RIRIGI NJUGUNA ::::::::::::::: 6TH CLIENT/APPLICANT

TRIAD ARCHITECTS ::::::::::::::: 7TH CLIENT/APPLICANT

MASTERBILL INTEGRATED PROJECTS ::::::: 8TH CLIENT/APPLICANT

R U L I N G

1. The Defendants have filed a Notice of Motion dated 15th May 2015 seeking orders that this court reviews or sets aside the *ex-parte* orders of the Honorable D.W. Nyambu Deputy Registrar issued on 4th February 2015 reserving Ruling on taxation herein for 26th March 2015.
2. The application also seeks orders to enlarge time within which the Applicants/Clients should have filed their submissions in relation to High Court Miscellaneous Application Numbers 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529 and 530 all of 2013 and 26 of 2014 between the parties.
3. The application further seeks order that the court be pleased to deem the Replying Affidavit filed on 8th April 2015, the Preliminary Objections filed on 5th April 2015 and the submissions filed on 16th April 2015 by the Clients/Respondents in relation to High Court Miscellaneous Application Numbers 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529 and 530 all of 2013 and 26 of 2014 to be properly on record.
4. The application is premised on the grounds set out therein, and is supported by the affidavit of **Leonard Njenga** dated **15th May 2015**.
5. The brief history of the application is that the above said 17 matters are currently the subject of a

- taxation process before Honourable D.W. Nyambu Deputy Registrar, who had conducted the said taxation and reserved a Ruling for 26th March 2015. The Applicant now alleges in this application that the Honorable Deputy Registrar did not give them enough time to prosecute the said taxation and that they were locked out in the taxation process. In addition, it is alleged that they were not given adequate time to prepare their submissions to the said taxation. They nonetheless prepared their submissions, replying affidavits and preliminary objections which they filed on 16th April 2015 well outside the time reserved for the Ruling by the Taxing Master, and hence the prayers herein to enlarge the time and to allow the late filing of those pleadings and the same be deemed duly filed.
6. The application is opposed. The Respondent filed a replying affidavit on 26th May 2015 and a Notice of Preliminary Objection on 25th May 2015. The Respondent opposes the application on the ground that fixing the application for hearing before a Judge of the High court offends the express and mandatory provisions of paragraph 13A and 76 of the Advocates Remuneration Order; that the High Court lacks jurisdiction to issue the prayers sought in the Notice of Motion dated 15/5/2015 and the same is a nullity in the law; and that the instant application is filed in violation of previous orders of this court issued on 20/3/2015, requiring the matters to proceedings for Ruling and the same is frivolous, vexatious and an abuse of the process of the court; and that Applicants have been in constant disobedience of this court's orders and directions of the Deputy Registrar to file submissions and are holding the court and the Respondent at ransom as they subject the proceedings to their whims, which is untenable and therefore the Applicants do not deserve the mercy of this court; and that the Applicants are intent on wasting time through filing of multiple applications to defeat the implementation of this court's orders, and in particular those of 20/3/2015 Applicants and that the present application is in bad faith and purely meant to hijack the proceedings before the Deputy Registrar and therefore impede the cause of justice.
 7. The Respondents further submitted that this court has no jurisdiction to interfere with the jurisdiction solely within the competence of the Deputy Registrar. Citing the case of **MG. SHARMA – VS. – UHURU HIGHWAY DEVELOPMENT LTD.** (Civil Appeal No 133 of 2000) where it was held that a judge of the High Court had no jurisdiction delving into taxation matters, before a decision is made, M/s Mwangi Keng'ara for the Respondent submitted that there is no provision for review in taxation process.
 8. In reply Mr. King'ara submitted that this court has unlimited jurisdiction to deal with the issue, and that other than the actual act of taxation, the High court has the jurisdiction to hear the matter. Counsel cited the case of **Abincha & Co. Advocates – Vs – Trident Insurance Co. Limited (Misc. Appl. No. 527 of 2011)** where it was held that a judge of the High Court has the jurisdiction to hear any matter which may be for a Deputy Registrar provided the issue was not challenging the jurisdiction of the Deputy Registrar to taxation.
 9. I have considered the application. Firstly, it should be noted that by an order of this court delivered on 17th June 2014 all the above 17 taxation matters were ordered to be taxed at the same time and before a single Taxing Master. That therefore means that the taxation of the same 17 matters is one long process, and in as much as the taxation will be on single individual file, the Ruling on the taxation of the 17 files must be delivered at the same time. There is therefore no doubt that any process relating to any of the said 17 taxation refers to all of them, except where expressly stated otherwise.
 10. Now to the main application, I think the issue for determination is whether or not this court has the jurisdiction to interfere with a process that is proceeding before the Taxation Master, and before the decision is made on taxation.
 11. In my view the general supervisory and inherent powers of this court to do justice or to ensure that justice is done is unlimited. It is only the exercise of that power that needs to be restricted especially where other entities have been donated the jurisdiction to act. The Taxing Officer is a special creature under the Advocates Remuneration Act, and is empowered with specialized skills to tax bills of costs. That process of taxation is required to be independent, and unless there are good and lawful grounds, a judge of the High Court has no jurisdiction to interfere with that process, and must be content to wait for a reference brought before him to act.
 12. Now, the complaint before the court by the Applicant is that they have been locked out of the taxation process. This is alleged to be a taxation of bills amounting to over Kshs.156,000,000/=

- and it is the Applicant's contention that if they are locked out of the process then they stand to be highly prejudiced and hence this application. Ideally, the claim involves a procedural process which ought, in the first instance, to be raised before the Taxing Master for her consideration. It is not a matter which the Applicant should rush with before the High Court, whose jurisdiction to interfere with the taxation process is severely restricted before a decision is made on taxation.
13. In this particular case there are now factors which distinguishes this application. The first one is that the said Taxing Master has been transferred and is now in Kilifi court. The other distinguishing factor which emerged from the submission of the parties is that it is not known whether the said Ruling which was to be delivered on 26th March 2015, has been written, and ready for delivery, although it is a reasonable assumption that the same may not be ready since it is now more than 76 days when it was supposed to have been delivered. There are therefore legitimate grey areas over the said Ruling reserved for 26th March 2015.
14. However, transfer of officers from one station to another is a common occurrence and needs not delay justice since there are already replacement Taxing Masters in this court. That being so, an enquiry into a taxation process like the one before the court must in the first instance be made before the very court or a court of concurrent jurisdiction. This application for review must be put before the current Deputy Registrar for consideration and determination. The issues which the Taxing Master will consider may include the following:—
- i. ***Whether there are instructions from Hon. D.W. Nyambu concerning the pending Ruling on taxation reserved for 26th March 2015.***
 - ii. ***Whether the Ruling will be delivered by Hon. D.W. Nyambu, and if so, when?***
 - iii. ***If not, whether the current Taxing Master will take over the matters and write a Ruling to be delivered on a known date.***
 - iv. ***If yes, whether the current Taxing Master will start the taxation process afresh or whether she will proceed with the pleadings on record.***
 - v. ***If the Taxing Master will proceed with the pleadings on record, whether or not she will allow parties to make further submission or file other documents.***
15. It is my view that in the event that the Hon. D. W. Nyambu had in fact not written the said Ruling, and that in fact, the current Taxing Master is to take over the entire process, the current Taxing Master, has the sole discretion about how to proceed, and if she chooses to proceed and write the Ruling based on the current pleadings duly filed, then the Applicant herein has the right to make this application before the current Taxing Master for her sole consideration.
16. In conclusion, I find that the matters the subject matter of the application before the court belong wholly, and are within the jurisdiction of the Taxing Master, or a court of concurrent jurisdiction.
17. For the reasons aforesaid, the Notice of Motion dated 15th May 2015 is struck out with costs in the cause.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 12TH DAY OF JUNE 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Njenga for the Plaintiff

M/s Mwangi for the Defendant

Teresia – Court Clerk