



**Lupe Contractors Company Limited v Kariuki (Environment and Land
Appeal 31 of 2018) [2024] KEELC 6384 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 31 OF 2018**

**BM EBOSO, J
SEPTEMBER 16, 2024**

BETWEEN
LUPE CONTRACTORS COMPANY LIMITED APPELLANT
AND
WILLIAM KARIUKI RESPONDENT

RULING

1. This Court [Eboso J] disposed this appeal through a ruling dated 25/10/2021 in the following verbatim terms:

“I have considered the application. In the absence of any response and/or submissions or any other form of opposition to the application, the court does dismiss this appeal in terms of prayer 2 of the notice of motion dated 20/1/2021. The appellant shall bear costs of the appeal. For the avoidance of doubt, the court makes the following disposal orders:

 - a. The appeal herein is dismissed.
 - b. The appellant shall bear costs of the appeal.”
2. Subsequent to that, the two parties to the appeal brought parallel bills of costs. Both parties invited the taxing officer of the court to tax their respective bills of costs. The appellant’s bill of costs was dated 30/11/2022 and was filed through M/s Kariithi Njagi & Co. Advocates. The respondent’s bill of costs was dated 24/6/2022.
3. Ultimately, the taxing officer of this court rendered a ruling dated 24/5/2023 in which she found and held that costs of the appeal had been awarded to the respondent and therefore there was “no merit in the bill of costs dated 30th March 2022”. Consequently, the taxing officer struck out the appellant’s bill of costs dated 30/3/2022. In addition, the taxing officer taxed the respondent’s bill of costs at Kshs. 199,790/-.



4. Aggrieved by the decision of the taxing officer, on 8/6/2023, the appellant lodged a notice of objection to the decision in the following verbatim terms:

“The applicant, Lupe Contractors Co. Ltd, hereby gives notice of its objection to the ruling on taxation delivered herein on 24th May 2023, and it so objects the ruling on the following items:

Respondent’s Bill of Costs dated 24th June 2022:

- a. Item 1 – Instruction fees.
- b. Item 2 – Getting up fees.
- c. Item 3 to 8 – Perusing application, drawing response and court attendance thereof.
- d. Items 10 -19 – Drawing, making copies and attendance of application thereof.

Applicant’s Bill of Costs dated 30th November 2022:

- a. Item 1 – Instruction fees.
- b. Items 2 to 4 – Perusing application and drawing response thereof.
- c. Items 5 to 14 – Perusing, drawing, making copies and attendances thereof

Dated at Nairobi this 7th day of June, 2023.

Kariithi Njagi & Co.

Advocates For The Applicant.”

5. Subsequent to that, the appellant filed a chamber summons [hereinafter referred to as “the reference”] dated 20/6/2023, inviting this court to:

- (i) set aside the impugned ruling of the taxing officer;
- (ii) re-tax the parallel bills of costs;
- (iii) in the alternative, refer the two parallel bills of costs to the taxing officer for re-taxation; and
- (iv) issue an order providing for costs of the reference.

The said reference dated 20/6/2023 is the subject of this ruling.

6. The reference was premised on the grounds set out in the chamber summons and in the supporting affidavit of Peter Mwangi dated 20/6/2023. It was canvassed through written submissions dated 17/5/2024. Counsel for the appellant identified the following as the three issues that fell for determination in the reference and submitted on them:

- (i) Whether the respondent is entitled to an award of costs of their unsuccessful application;
- (ii) Whether the respondent is entitled to costs of an application compromised by a consent order silent on costs; and
- (iii) Whether the respondent is entitled to getting up fees.

7. On whether the respondent is entitled to an award of costs of their unsuccessful application, the appellant made reference to the application dated 1/3/2019 and submitted that the said application



was found unmerited and was dismissed with costs to the appellant. The appellant contended that the respondent's application having been dismissed with costs, it was an error for the taxing officer to subsequently award the respondent costs of the dismissed application.

8. On whether the respondent was entitled to costs of an application that had been compromised by a consent order silent on costs, the appellant submitted that the application dated 19/11/2018 was compromised through a consent entered into on 19/12/2018, adding that the subsequent award of costs of the application to the respondent constituted a re-writing of the parties' agreement by the court, a decision which violated the principle of privity of contract.
9. On whether the respondent was entitled to getting up fees, the appellant referred the court to paragraph 3 of schedule 6 of the *Advocates (Remuneration) Order* and submitted that getting up fees in an appeal is awarded through a certification by the Judge. The appellant argued that no certification had been issued by the Judge, hence there was no basis for the award of getting up fees in this appeal.
10. In conclusion, the appellant urged the court thus:

“Conclusion

The applicant has demonstrated why the respondent is not entitled to the sums awarded in the Ruling given on 24/5/2023. The award of the disputed sums have resulted in a great injustice to the applicant as the amounts are irregular, unlawful and unjustifiable. In order for the ends of justice to be met, we pray that the court finds in favour of the applicant by setting aside the decision of the taxing master and/or varying the said decision as urged in these submissions.”

11. The respondent filed written submissions dated 2/7/2024 in which he identified and submitted on the following three issues:
 - (i) Whether the notice of objection was filed procedurally;
 - (ii) Whether the appellant is entitled to any award of costs; and
 - (iii) getting up fees.
12. The respondent cited paragraph 11 (1) and (4) of the *Advocates (Remuneration) Order* and submitted that the impugned ruling having been rendered on 24/5/2023 and the notice of objection having been filed on 8/6/2023, the said notice of objection was fatally defective because it was filed outside the prescribed limitation period of 14 days.
13. On whether the appellant is entitled to any award of costs, the respondent cited Section 27 of the *Civil Procedure Act* and argued that the respondent having been awarded costs of the appeal, he was properly entitled to the award. The appellant added that the taxing officer properly taxed off costs of the application dated 19/11/2018.
14. On getting up fees, the respondent cited paragraph 3 of Schedule 6 of the *Advocates Remuneration Order* and the decision in *Charles Mwangi Muriu v Benjamin Makokha Nyongesa*; Machakos ELC Appeal No. 11 of 2019 and submitted that the taxing officer

“was correct in affirming that the court ought to look at the full picture as opposed to compartmentalizing the matter when awarding getting up fees.”
15. The court has considered the reference and the parties' rival submissions. The court has also considered the relevant legal frameworks and jurisprudence. In the notice of objection dated 7/6/2023, the



appellant objected to a total of 18 items in the respondent's bill of costs dated 24/6/2022. The appellant also expressed themselves as objecting to the taxing officer's findings on a total of 14 items in the appellant's parallel bill of costs. However, in their subsequent written submissions, the appellant did not say anything on the taxing officer's finding(s) on their bill of costs. Secondly, they only submitted on the taxing officer's award on three (3) items in the respondent's bill of costs. On their part, the respondent raised the issue of competency of the reference, contending that the reference was fatally defective and terming it a non-starter on account of limitation period relating to the lodging and serving of the notice of objection.

16. Taking into account the foregoing, the following are the four key issues that fall for determination in this ruling:
- (i) Whether the appellant's reference is fatally defective on account of limitation period for lodging a notice of objection;
 - (ii) Whether the respondent is entitled to an award of costs on the application dated 1/3/2019;
 - (iii) Whether the respondent is entitled to an award of costs on the application dated 19/11/2018; and
 - (iv) Whether the respondent is entitled to an award of getting up fees in this appeal.

The court will deal with the four issues sequentially in the above order.

17. Is the reference under consideration fatally defective on account of limitation period? A reference under paragraph 11 of the *Advocates (Remuneration) Order* is initiated by filing and serving a notice of objection setting out the grounds of objection and the contested items in the award/decision of the taxing officer. Paragraph 11 (1) prescribes a limitation period of 14 days within which the notice of objection is to be filed and served. The 14 days limitation period runs from the date when the impugned taxation decision is rendered.
18. The impugned taxation decision was rendered on 24/5/2023. The 14 days limitation period was to be reckoned from 25/5/2023, meaning that 25/5/2023 was to be counted as the first day. The 14 days limitation period therefore lapsed on 7/6/2023. The notice of objection through which the appellant initiated this reference was filed on 8/6/2023. Clearly, the notice of objection was filed after expiry of the 14 days limitation period. There was no evidence of any time-enlarging order procured by the appellant prior to filing the notice of objection. Indeed, the appellant did not bother to respond to this critical issue that was raised by the respondent. For the above reason, the court agrees with the respondent that this reference was initiated outside the prescribed limitation period of 14 days. Consequently, the reference is fatally incompetent. Regrettably, this is a fatal jurisdictional defect.
19. The result is that the reference under consideration stands to be struck out on the ground that it was initiated outside the prescribed limitation period of 14 days. It is so ordered.
20. In line with the principle in *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, the court will down its tools without venturing into the other issues in the reference because it does not have the proper platform on which to pronounce itself on the issues.
21. In summary, the application dated 20/6/2023 [the reference] is struck out for having been initiated through a notice of objection that was filed outside the prescribed limitation period of 14 days. The appellant will bear costs of the application/reference.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF SEPTEMBER 2024



B M EBOSO

JUDGE

In the presence of: -

Mr. Njagi for the Appellant

Respondent - Absent

Court Assistant: Melita

