



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC MISC. APPL. NO 9 OF 2021

MIRUGI KARIUKI & CO ADVOCATES.....APPLICANT

VERSUS

ANDREW ISOE OCHOKI.....RESPONDENT

RULING

1. Before me for determination is the respondent/applicant's Chamber Summons application dated 15th October 2021 filed in court on 19th October 2021 made under Section 1A and 3A of the Civil Procedure Act and Rule 11 of the Advocates Remuneration Order. The respondent/applicant in the application sought the following orders:

1 ...Spent

2 ...Spent

3. *That this honourable court be pleased to set aside and or vary the Ruling and Order of Hon. N. Makau delivered on the 29/09/2021 by re-taxing the Advocate/client Bill of costs on instructions fees getting up fees and ½ increase and give credit to the respondent on monies paid by the client well in advance amounting to Kshs. 150,000/=*

4. *That this honourable court be pleased to grant such other or further order as it may deem fit under the circumstances.*

5. *That costs of this application be provided for.*

2. The application was supported on the grounds set out in the body of the application and the supporting affidavit sworn by Dr. Andrew Isoe Mingate Ochoki. He averred that he had instructed the firm of Mirugi Kariuki & Co. Advocates to act for him in Nakuru ELC 307 of 2018 (O.S) which matter was still pending hearing. He averred that the said firm did not file any defence to the claim and that the value of the subject matter was Ksh. 1,300,000/=. He averred that the taxing officer wrongly applied schedule 6 of the Advocates Remuneration Order on a higher scale during the taxation resulting in the erroneous taxation that she made.

3. The respondent/applicant further averred that the matter was never heard and no directions for trial had been taken and it was therefore prejudicial to him that the respondent was awarded full fees on a matter that had not been concluded. He averred that the award of Ksh. 383,235/= was too high and that he had not been given credit of Kshs.150,000/= that he had paid to the said Advocates.

4. The applicant/respondent filed a Replying Affidavit sworn by Kahiga Waitindi advocate on 24th November 2021. He deposed that the reference is time-barred as it was filed outside the stipulated timelines as set out under paragraph 11(1) of the Advocates Remuneration Order. He further deposed that timelines are not technicalities of procedure that can be accommodated and that the respondent/applicant did not seek leave of court as provided for under paragraph 11(1) (2) of the Advocates Remuneration Order to file the reference out of time.

5. He further deposed that there is no evidence attached by the respondent/applicant to support his claim that he had paid Ksh.150,000/= as fees to the applicant/respondent. He deposed that the respondent/applicant was aware of the taxation cause but failed to demonstrate to the court that the Kshs.150,000/= was paid as alleged. The respondent prayed for the dismissal of applicant's reference.

6. When the reference came for mention on 1st December 2021 for directions, the parties indicated they wished to explore a settlement out of court. The court granted the parties liberty to attempt settlement through Alternative Justice System (AJS) and directed a mention on 24th January 2022 for further directions. On the date, the applicant did not appear and Mr. Kibet advocate who appeared for the respondent informed the court that there had been no settlement and invited the court to render a ruling on the basis of the parties pleadings.

7. I have considered the application together with the affidavit sworn in support and the replying affidavit sworn in opposition. The Respondent has taken objection to the reference arguing that the same was filed out of time without the leave of the court and consequently

the same was incompetent and therefore unsustainable.

8. Paragraph 11 (1) and (2) of the Advocates Remuneration Order provides for the procedure to be followed when a party is dissatisfied with a decision of a taxing officer 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 the parties concerned, setting out the grounds of his objection.

9. The ruling on the taxation was delivered on 29th September 2021 by the taxing officer. Under paragraph 11(1) of the Advocates Remuneration Order, the applicant ought to have given a notice in writing to the taxing officer on the items of taxation to which he objected to within fourteen days. The applicant in this matter filed his Notice of Objection to Taxation together with the reference on 19th October 2021 which was nineteen days after the ruling was delivered and therefore outside the period provided for under paragraph 11(1).

10. From the court record there is no response filed by the Deputy Registrar giving the reasons for her decision. The court in the case of **Mumias Sugar Company Limited v Professor Tom Ojienda and Associates KSM HC Misc. No. 279 of 2017 [2018] eKLR** held that where the reasons for the taxation are contained in the ruling there was no need to seek for reasons for the decision once the ruling has been delivered. Where such reasons have been given in the ruling, it is indeed superfluous to require the taxing officer to prepare another ruling repeating the same reasons that are contained in the ruling.

11. The court in the case of **Ahmed Nasir Abdikadir & Co. Advocates -vs- National Bank of Kenya Ltd (2006) eKLR** held as follows:

“ Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not indeed to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling --- Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in substance the same is dismissed.

12. In the present matter, the ruling by the taxing officer contained the reasons and therefore there was no need for the respondent/applicant to seek for the reasons for the taxation. As noted before, the notice of objection to taxation was filed nineteen days from the date the ruling was delivered and the respondent/applicant did not give any reasons for the delay. In my view there is no competent reference before the court the same having been filed out of time without the leave of the court. The ruling by the taxing officer contained the reasons and the invocation of paragraph 11(2) of the Advocates Remuneration Order was unnecessary. If the applicant was dissatisfied with the ruling on taxation delivered on 29th September 2021 he ought to have filed a reference within 14 days of the ruling by the 14th October 2021. The reference was filed on 19th October 2021 clearly out of time and no application to enlarge time was sought by the applicant as provided under paragraph 11 (4) of the Advocates Remuneration Order.

13. The reference is accordingly struck out for being incompetent and an abuse of the court process.

14. I make no orders for costs of the reference.

15. Orders accordingly.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 3RD DAY OF MARCH 2022.

J M MUTUNGI

JUDGE