



**Zadok East Africa Limited v Associates (Miscellaneous Application
E016 of 2021) [2022] KEELC 3452 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3452 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E016 OF 2021**

OA ANGOTE, J

JUNE 2, 2022

BETWEEN

ZADOK EAST AFRICA LIMITED APPLICANT

AND

LUBULELLAH & ASSOCIATES RESPONDENT

RULING

1. In the Chamber Summons dated 11th November, 2021, the Applicant has sought for the following orders;
 - a. That this Honourable court be pleased to enlarge the time within which the Applicant is to file and serve its reference challenging the decision of the Taxing Master dated 6th October, 2021.
 - b. That the Applicant be granted leave to file and serve a reference challenging the Taxing Master's decision and give a notice of objection out of time.
 - c. That the Notice of objection to the decision of the Taxing Officer expressed through the Applicant's letter dated 21st October, 2021 be deemed to have been properly filed on time.
 - d. That the draft reference filed herein be deemed as duly filed within time, by order of this Honourable Court, upon the payment of the requisite Court fee, within such time as may be ordered by the court.
 - e. That the costs of this application be provided for.
2. The application is supported by the Affidavit of the Applicant's advocate who deponed that the Respondent filed the Advocate-client Bill of Costs on 4th February, 2021; that the Applicant filed a Notice of Preliminary Objection in opposition to the Bill of Costs and that the Deputy Registrar directed that the Preliminary Objection be canvassed by way of written submissions.



3. It is the deposition of the Applicant's advocate that when the matter was mentioned on 16th September, 2021, the Deputy Registrar changed tune and insisted that the matter was coming up to confirm filing of submissions on the Bill of costs and ignored the Respondent's Preliminary Objection.
4. Counsel for the Applicant deponed that the said directions notwithstanding, he filed his submissions in relation to the Preliminary Objection; that the Applicant also had a Replying Affidavit in respect to the Bill of costs and that on 6th October, 2021, the Deputy Registrar proceeded to tax the Bill of Costs at Kshs.75,925.
5. According to the Applicant's counsel, he asked to be furnished with the copy of the Ruling which the court indicated was not ready; that despite filing a letter requesting for the Ruling, paying the requisite fees and following up with an email, he has never been furnished with the Ruling.
6. It was deponed that it was only on 11th November, 2021 that he was served with the Deputy Registrar's letter acknowledging receipt of the objection to taxation and indicating that the reasons for taxation are contained in the Ruling and that the delay in filing the reference was occasioned by the fact that the Applicant's advocate could not reach the Applicant's Director who had contracted covid-19.
7. The Respondent opposed the application by filing Grounds of Opposition in which it averred that the Applicant did not give written notice to the items of taxation which it was objecting to within 14 days of the decision and that the Applicant has not shown any reasonable cause as to why it did not file a written notice to the taxing officer within 14 days of the decision.
8. The Respondent finally averred that this court does not have jurisdiction to stay execution of taxed costs as it is trite that the Advocates Act is a self-contained Act and taxation proceedings are not governed by the Civil Procedure Act and that the Applicant never filed a Preliminary Objection neither did he serve it on the Respondent. The parties filed submissions which I have considered.
9. The record shows that the Respondent filed its client-advocate Bill of Costs dated 3rd February, 2021. The Client-Advocate Bill of Costs was in respect of an agreement for the sale of land. When the Bill of Costs came up for hearing on 8th April, 2021, the Deputy Registrar directed the Respondent herein to file a bundle of documents in support of the Bill of Costs.
10. The record shows that when the matter came up on 24th July, 2021, the Applicant informed the Deputy Registrar that she did not have the requisite jurisdiction. The court directed the parties to file their submissions on both the Preliminary Objection and the Bills of Costs.
11. On 6th October, 2021, the Deputy Registrar delivered her Ruling on the Bill of Costs in the presence of the Advocates for both parties. Contrary to the assertion of the Applicant, the Deputy Registrar considered the objection he had raised in respect to her jurisdiction and limitation of time.
12. The Applicant is seeking for leave to file the reference out of time. Paragraph 11(1) and (2) of the Advocates Remuneration Order Provides that should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
13. It is only after the aggrieved party gives notice to the taxing officer of the items of taxation to which he objects that the taxing officer is required to forward to him the reasons for her decision on those items, whereafter the objector, within 14 days from the receipt of the reasons, files a reference.
14. The record does not show the notice of objection that the Applicant filed, neither does it show a letter requesting for reasons within 14 days of the Ruling. Indeed, the only letter that the Applicant wrote to the Deputy Registrar requesting for reasons for her decision is dated 21st October, 2021, which



was done outside the mandatory 14 days limit prescribed under paragraph 11(1) of the *Advocates Remuneration Order*.

15. In any event, the letter dated 21st October, 2021 cannot form a proper basis of a notice of objection to taxation because the same does not state the items objected to contrary to the provisions of paragraph 11(1) of the *Advocates Remuneration Order*.
16. In view of the fact that there is no competent notice of objection to taxation, this court cannot deal with the issue of whether leave should be granted to the Applicant to file the reference out of time or not.
17. The above notwithstanding, the Applicant has not sufficiently explained why it did not file a written notice to the taxing officer within 14 days of the Ruling considering that the Advocate was present in court when the Ruling was delivered.
18. Furthermore, the reason given by the advocate that the Applicant's Director contracted covid-19 and was hospitalized has not been supported by any evidence. Indeed, it is unprocedural for the Applicant's advocate to depose that the Applicant's Director was sick. The issue of one being sick is within the personal knowledge of the person alleging that he was sick, and not his counsel.
19. Lastly, the typed Ruling of the Deputy Registrar has always been on record. As we held by the court in the case of *Abmednassir Abdikadir and Co. Advocates vs National Bank of Kenya Limited No. 2* (2006) 1 E.A, where there exists a considered Ruling, the taxing master's reasons for the decision as anticipated by paragraph 11 of the Advocates Remuneration Order are deemed to be contained in the Ruling.
20. Having failed to justify its delay in filing a notice of objection to taxation and reference within the prescribed time, it is the finding of the court that the application dated 11th November, 2021 is unmeritorious.
21. The application dated 11th November, 2021 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 2ND DAY OF JUNE, 2022.

O. A. Angote

Judge

In the presence of;

No appearance for the Applicant/Client

Edga Lubulellah for the Respondent/Advocate

Court Assistant – Nechesah

