



**Gudka v Maranga t/a legal representative of the firm of Ramesh
Sharma Advocate & another (Miscellaneous Application E762 of 2021)
[2025] KEHC 28 (KLR) (Commercial and Tax) (13 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 28 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E762 OF 2021
RC RUTTO, J
JANUARY 13, 2025**

BETWEEN

VIRENDRA RAMJI GUDKA APPLICANT

AND

**VIOLET MARANGA T/A LEGAL REPRESENTATIVE OF THE FIRM OF
RAMESH SHARMA ADVOCATE 1ST RESPONDENT**

ESTATE OF RAMESH SHARMA 2ND RESPONDENT

RULING

1. The appellant, aggrieved by the Ruling of the Taxing Master delivered on 30th November 2023, filed this Reference by way of a Chamber Summons dated 20th May 2024 seeking the following reliefs set out verbatim;
 1. ... Spent;
 2. That this Honorable Court be pleased to stay the ruling of the Honorable Taxing Master delivered on 30th November 2023 in so far as the same relates to the reasoning and determination pertaining taxation of the bill of costs dated 31st July 2023 be set aside/removed/quashed and vacated by way of reference and all the consequential orders be and are hereby set aside;
 3. That in the alternative to prayer 2, the Honorable Court exercises its inherent jurisdiction and be pleased to re-tax the bill of costs dated 31st July 2023;



4. That in the alternative to prayers 2 and 3 above, the Honorable Court exercises its inherent jurisdiction and remit the bill of costs dated 31st July 2023 to another Taxing Officer for re-taxation or make directions to a fresh taxation;
 5. That the costs of this application be provided for.
2. The reference is premised on the grounds on the body of the Chamber Summons and the supporting affidavit of Alibhai Hassan, advocate practicing in the nature and style of HMS Advocates for the applicant sworn on 20th May 2024. In summary, the applicant stated as follows: he was never served with the bill of costs dated 31st July 2023; he was also not served with notices of taxation and/or mention notices scheduled for 19th September 2023, 17th October 2023 and 30th November 2023 when the ruling was delivered; the absence of the applicant's participation infringed on his right to be heard; that resultantly, the applicant suffered grave injustice; and the 1st respondent misinformed the court when it stated that the applicant was not interested in filing any response to the bill.
 3. On the substance of the bill, the applicant disputed the award on instruction fees as based on wrong principles as the matter in dispute yet to be determined. The applicant further disputed the award made in items 2 (the folios according to him, being 26 and not 299), 3 (as not being drafted by the 1st respondent), 4 (did not relate to the 1st respondent), 5, 7 and 9 (for not being taxed in line with schedule 6 order 9), 6 (as the supplementary affidavit had not been filed) and 8 as the written submissions dated 22nd March 2022 had 27 and not 130 folios. Finally, items 5, 7, 9, 10, 12, 14, 16, 18, 20, 22, 24, 28, 30, 32 and 38 were awarded in error as the attendances failed to match specified stipulations.
 4. In opposition to the reference, the 1st respondent filed a replying affidavit sworn by Violet Maraga, the 2nd respondent's legal representative on 27th May 2024. The reference was opposed on the following grounds: the applicant filed HC COMM MISC No. E762 of 2021 but failed to prosecute it; the applicant or his Counsel failed to attend court on several occasions; the cause was dismissed on 16th May 2023 with costs; the applicant has since filed a notice of appeal dated 24th May 2023; the applicant is aware of the developments in the matter having access to the judiciary e-filing portal; that the court regularly and dutifully served the parties with the requisite notices; for this reason, the applicant was estopped from stating that it was never made aware of the developments in the matter.
 5. In addition, the respondents served the applicant with the bill of costs dated 31st July 2023 through its Counsel's last known email address; in spite of being duly served with the necessary notices; the applicant failed to respond substantively and is the owner of his own misfortune; in fact, the applicant's Counsel sought for typed proceedings by way of letter dated 16th May 2023 on 23rd November 2023 and were thus aware of the progress of the matter.
 6. The deponent advanced that the bill of costs was awarded to scale on 30th November 2023 and does not warrant interference by this court. She pointed out that the applicant, in a bid to deny the respondents the fruits of the judgment, sought stay of execution vide an application dated 19th February 2024. That the sum of Kshs. 1,944,140.00 is secured in a joint escrow account. She further observed that: the reference was filed 79 days and not 14 days after the ruling was delivered; there is no live matter between the applicant and the respondents as the same has conclusively been determined; that the pleadings were filed in favor of the applicant regardless of the fact that they were not drawn by the 2nd respondent and were therefore properly included; and that the application lacks merit and the same ought to be dismissed with costs.
 7. The applicant filed a supplementary affidavit sworn on 12th March 2024 in rejoinder. He reiterated the contents of its reference adding: it actively participated in the prosecution of HC Comm Misc



No. E762 of 2021; the respondents had all along been serving the applicant through their email legal@hmsadvocates.com and copied other email addresses. As a result, service of the bill of costs in another email was mischievous; the respondents never served the applicant with the relevant notices in spite of the court's directions; the filing of the letter requesting for typed proceedings was not denied. However, it did not appear in the same tab as that updating the progress of the dispute. Nonetheless, the respondent was duty bound to serve the requisite notices; the sums awarded are contested and inordinately high.

8. The reference was canvassed on the basis of the parties' written submissions. In his written submissions dated 31st May 2024, the applicant focused on the items challenged praying that they be reviewed in accordance with his calculations. The respondents on their part filed their written submissions dated 6th June 2024. They urged this court to find that the bill of costs was drawn to scale and the applicant was well aware of the progress of the matter. They prayed that the reference be dismissed with costs.
9. I have considered the application, the affidavits and the annexures thereto alongside the law. I have also considered the submissions of the parties which are extensive and comprehensive. The reference is based on two broad grounds: that the applicant was never served with the bill of costs and subsequent hearing notices and that the bill of costs was awarded exorbitantly as pointed out in a number of the items. Those shall formulate the issues for determination and I shall analyze them sequentially as follows:

**Whether the applicant was served with the bill of costs dated 31st July 2023 and subsequent notices?
If the answer to the above is in the negative, what is the consequent effect of non-service?**

10. Through the email address of info@hmsadvocates.com, the applicant was served (by the 1st or is it 2nd respondent)with the bill of costs dated 31st July 2023 and the notice of taxation via on 15th September 2023. There is an affidavit of service in respect to this action dated 18th September 2023. It is this same email that appears in the applicant's Advocate's email of 2nd June 2023 as a carbon copy. On this day, the applicant served the 2nd respondent with its notice of appeal. It is this email that also appeared in the applicant's supplementary affidavit annexure as a carbon copy. I therefore find that the applicant was duly served with the notice of taxation and the bill of costs and cannot renege this fact.
11. In the proceedings of 19th September 2023, the taxing matter directed that a mention notice be issued since the matter was adjourned to 17th October 2023. I note that the applicant did not participate in those proceedings and it is for this reason that the taxing master may have been informed to direct service upon the applicant There is no evidence that the applicant was served as directed by way of affidavit of service on record. That did not take place. Further, the respondents do not deny that they did not serve the applicant with a subsequent mention notice.
12. This court reiterates that service of court processes is fundamental and goes to the fulcrum of natural justice. To this end, it is imperative for a court of law to be satisfied that an adversary was served with the necessary notices and pleadings before making a determination. This is because a determination may be so adverse requiring the response of the adversary to avoid breach of the rules of natural justice requiring every party to have audience before court and respond to the case against him/ her. I find it useful to quote the erudite words of Achode, J. (as she then was) in *INM vs. AJMN* [2022] eKLR where she cited the following decisions regarding this discourse:

- “7. I have carefully considered the appeal and the submissions of the parties and find that the primary issue for determination is whether the trial magistrate erred in refusing to set aside the ex-parte judgment entered in favor of the Respondent, to give the Appellant the opportunity to ventilate this case.



8. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See *Onyango Oloo v. Attorney General* [1986-1989] EA 456). There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. (See *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 664, at 711 – Supreme Court of India)
9. In *Ridge v Baldwin* (1964) AC (1963) 2 ALL ER 66 the court, while discussing the right to fair hearing observed as follows;

“The principle of fairness has an important place in the administration of justice and is also a good ground upon which courts ordinarily exercise discretion to intervene and quash the decisions of a tribunal or subordinate court made in violations of right to a fair hearing and due process.”
13. While the respondents relied on a screenshot of message notifications from the judiciary e-filing portal system notifying the respondents of a mention date, ruling date and the status of the file, that is not tantamount to service as was directed by the trial court. It would be reckless for this court to conclude that the applicant was duly served with the mention notice as directed. That would certainly amount to a conjecture. At any rate, I do not think that the advent of the judiciary e-filing processes countermanded the procedural requirements of service. Just as service was done at the first instance, there was no explanation as to the resort to the e-filing portal as a mode of service. Therefore, flowing from the above, I find that the applicant was not served with the notice of the proceedings of 17th October 2023 as directed by the court. The applicant thus ought to benefit from this.
14. Having found that it was improper for the taxing master to proceed with the bill of costs dated 31st July 2023 without first being satisfied that service of the mention notice by the applicant was effectively done, I do not need to make any determination on the items contested since the applicant will have his day in court. The applicant is already aware of the contents of the bill of costs going by his contestation of the items as listed, paving way for the taxation of the bill of costs on its merits. For those reasons, I find that the reference succeeds in the following terms:
 1. The ruling dated 30th November 2023 be and is hereby set aside;
 2. The matter shall be taxed afresh before a taxing master other than Honorable C. L. Adisa;
 3. Since the applicant was properly served with the notice of taxation and bill of costs dated 31st July 2023 on 15th September 2023, he shall pay throw away costs to the respondents in the sum of Kshs. 15,000.00 within 30 days from the date of this order failing which the orders in 1 and 2 above shall lapse.
 4. Each party shall bear its own costs of the reference.

It is so ordered.



Orders accordingly

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 13TH DAY OF JANUARY 2025

For Appellant:

For Respondent:

Court Assistant:

3 | Page

