



REPUBLIC OF KENYA



KENYA LAW
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**Masika & Koross Advocates v Lantech (Africa) Limited (Commercial Case E273 of 2023)
[2025] KEHC 5482 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E273 OF 2023**

AA VISRAM, J

APRIL 24, 2025

BETWEEN

MASIKA & KOROSS ADVOCATES ADVOCATE

AND

LANTECH (AFRICA) LIMITED CLIENT

RULING

1. I have considered the Notice of Motion Application dated 9th October, 2024, together with the affidavit sworn on even date; the grounds of opposition; the submissions of the parties and the applicable law.
2. The Applicant seeks to enlarge time within which to file a Reference against the decision of the taxing officer delivered on 27th September, 2024.
3. The sole issue for determination is whether the Application for enlargement of time is merited?
4. The Applicant submitted that the said decision was not made available to the parties until 15th October, 2024, when it was posted in the e-filing portal. Accordingly, it could not file a Reference on time in the ordinary manner. In Counsel's view, time expired on the 14th October, 2024. He submitted that there was no way to file a Reference in the circumstances.
5. Further to the above, Counsel contended that the decision was contrary to law because whereas the taxing officer made a finding that the Applicants were instructed, the taxing officer refused to tax the Bill, and opted to strike out the same causing an injustice to the advocates.
6. The Applicant contended that no prejudice will be occasioned if the Application is allowed in the draft Reference is deemed as properly filed.



7. In opposition to the Application, the Respondent submitted that the present Application is an abuse of the court process, premature, misconceived and bad in law and should forthwith be dismissed.
8. The Respondent submitted that the taxing master's ruling was delivered on the 27th September, 2024. In the ruling, the taxing master struck off the Bill of Costs filed by the Applicant/Advocate in its entirety for lack of merit since the Applicant/Advocate failed to prove to the court that they had instructions from the Client/Respondent, therefore the Bill of Costs was not taxed and therefore no basis for filing a Reference has been provided. The Applicant ought to have filed an appeal instead of a Reference.
9. As regards the timelines, the Respondent argued that the Applicant had sufficient time from the date the ruling was delivered on Friday 27th September, 2024, to file their Reference but opted to file the present Application on 9th October, 2024. Counsel pointed out that 14 days began running on 30th September, 2024, and ended on 15th October, 2024, taking into account that 10th October, 2024, was a national holiday. Accordingly, the Applicant had sufficient time to file the Reference.
10. Counsel submitted that upon the court uploading its ruling on 15th October, 2024, if the Applicant was dissatisfied with the ruling and reasons for ruling of the taxing master, they should have filed a notice of objection and it is upon receipt of this notice that Rule 2 is given life, whereby, the taxing master has to provide reasons for their decision to the Objector and it is only within 14 days from receipt of the reasons that the Objector can refer his objection to the court.
11. However, rather than follow the above procedure, the Applicant filed an application seeking enlargement of time. Counsel contended that the Applicant has not sufficiently provided what circumstances exactly have led to the delay in filing of the Reference as opposed to following the proper procedure.
12. In the Supreme Court case of County Executive of Kisumu v County Government of Kisumu & 8 others (Civil Application 3 of 2016) [2017] KESC 16 (KLR), the court stated as follows:

“ 23. It is trite law that in an Application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court.”
13. Based on the record before me, this has not been done. It is not clear to me why the Applicant failed to follow the appropriate procedure, having received the ruling within the period of time, namely 15th October, 2024, given the public holiday. Further, it is not clear why the Respondent had no difficulty in obtaining the subject ruling on time but the Applicant was unable to do so. I do not think the explanation is satisfactory.
14. Having stated the above, the Applicant ought to have followed the correct procedure for challenge. Namely, it ought to either have filed an appeal in the circumstances or followed the rules of procedure as prescribed under paragraph 11 rule 1 and 2 of the Advocates Remuneration Order (A.R.O).
15. Under the said rule (1) when a party is aggrieved by the decision of a taxing master, they are required to file a notice of objection to the item(s) they object to within 14 days from the date of the decision. Thereafter, the taxing master is mandated to issue a ruling bearing the reasons for the taxation.
16. Therefore, in the event the Applicant was aggrieved by the taxing master's decision, it ought to have followed the procedure set out above by issuing a notice of objection to the taxing master requesting for reasons on her decision, which it failed to do.



17. In *Speaker of the National Assembly vs James Njenga Karume* Court of Appeal at Nairobi Civil Application No. 92 of 1992 (1992) eKLR where it was held that:-

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”

18. I am persuaded that the Applicant prematurely invoked the discretion of this Court by invoking the provisions of rule 4 of paragraph 11, instead of following the procedure as laid out in rule 1 & 2, of the remuneration order or pursuing an appeal.

19. The procedure, as stated above, may not be leap frogged. The same is mandatory in the first instance. It is trite that rules of procedure are handmaidens and not mistresses of justice, and they are meant to aid in the administration of justice and not to cause injustice (See Nairobi Civil Appeal 810 of 2001: *Microsoft Corporation v Mitsumi Computer Garage Ltd & another* [2001] eKLR). Accordingly, the failure on the part of the Applicant to follow the prescribed procedure and leap frog to the next stage, was in my view fatal.

Conclusion

20. Based on the reasons set out above, I find and hold that the Application is without merit. The same is dismissed with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 24TH DAY OF APRIL, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

.....Court Assistant

.....for Advocates/Applicants

.....for Client/Respondent

