



Rono & 3 others v Stegro Sacco (Civil Case E009 of 2023 & Judicial Review 463 of 2017 (Consolidated)) [2024] KEHC 5612 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CIVIL CASE E009 OF 2023 & JUDICIAL REVIEW 463 OF 2017 (CONSOLIDATED)**

**RL KORIR, J
APRIL 11, 2024**

BETWEEN

**DAVID RONO 1ST PETITIONER
STANLEY SIGILAI 2ND PETITIONER
SAMWEL SIGILAI 3RD PETITIONER
DAVID K. LABOSO 4TH PETITIONER**

AND

STEGRO SACCO RESPONDENT

RULING

1. For clarity purposes, there are two undetermined Applications both dated 10th May 2023. The Petitioners filed a Notice of Motion dated and filed on 10th May 2023 where they wanted this court to convert the Certificate of Costs issued on 27th April 2023 into a Judgment of this court.
2. The Respondent, Stegro Sacco filed its Chamber Summons dated 10th May 2023 on 18th May 2023 seeking the following Orders:-
 - I. Spent.
 - II. Spent.
 - III. That the decision of the Taxing Officer as evidenced in the Ruling delivered on 27th April 2023 with respect to all items in the Bill of Costs dated 7th February 2023 be set aside and taxed afresh by this Honourable Court.
 - IV. That in the alternative, the Honourable Court be pleased to order that the Respondents' Bill of Costs dated 7th February 2023 with respect to all items be taxed afresh by another Taxing Master.



- V. That costs of this Application be awarded to the Applicant.
3. The Application was brought under the provisions of Order 22, Rule 22 of the [Civil Procedure Rules 2010](#), Paragraph 11 of the Advocates Remuneration Order and Article 159 of the [Constitution of Kenya 2010](#). It was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Joseph Mabwai on 10th May 2023.
 4. It is this (Respondent's) Chamber Summons Application that parties took directions on 25th July 2023. After analysing the two Applications, it is my view that it would be futile to determine the Petitioner's Notice of Motion Application before the Respondent's Chamber Summons Application. I will therefore determine the Respondent's Chamber Summons Application dated 10th May 2023 first as its outcome has a bearing on the Petitioner's Application.

Chamber Summons Application dated 10th May 2023

The Applicant's Case.

5. The Applicant (Stegro Sacco Limited) stated that the Petitioners obtained a Certificate of Costs dated 27th April 2023 for the amount of Kshs 4,047,945/= which was excessive and unjustifiable.
6. It was the Applicant's case that there were no receipts produced in support of the expenditure on disbursements and that the value of the subject matter was not ascertainable.
7. The Applicant stated that the suits relating to the taxation were compromised and they did not reach the trial stage. The Applicant further stated that it had sought leave to file the Reference out of time.
8. It was the Applicant's case that the decision by the Taxing Master was based on an error of principle and amounted to the wrongful use of discretion.
9. Counsel for the Petitioners/Respondents, Mr. Mugumya told this court on 25th July 2023 that they had filed a Replying Affidavit in opposition to the Application.
10. As a result, I have gone through the court file and there is no trace of the said Replying Affidavit. Technically therefore there was no opposition to the Application. The court directed that this Application be canvassed through written submissions.
11. Despite being given time extension by the court, the Applicant failed to file their submissions.

The Respondents'/Petitioners' submissions.

12. Through their submissions dated 25th July 2023, the Respondents submitted that the Reference was not filed within the stipulated time. That according to Rule 11 of the [Advocates \(Remuneration\) Order 1962](#), if the Applicant was aggrieved by the decision of the Taxing Master, it had 14 days to give a Written Objection to the Taxing Officer and 14 days to file a Reference after receiving the reasons of the Ruling by the Taxing Master.
13. It was the Respondents' submission that the Applicant filed its Application on 18th May 2023 without seeking the leave of the court. That the delay in filing the Reference was by design and was intended to delay them from enjoying the fruits of their Judgment. It was the Respondents' further submission that no reason had been given for the delay therefore the Reference was incompetent and ought to be dismissed. They relied on [N.W Amolo T/A Amolo Kibanya & Co. Advocates v Samson Keengu Nyamweya](#) (2016) eKLR.



14. The Respondents submitted that costs follow the event. That after dismissing the Reference, the Applicant should bear the costs of the Reference.
15. I have gone through and considered the Chamber Summons Application dated 10th May 2023 and the Respondent's Written Submissions dated 25th July 2023. The two issues for my determination was:-
 - i. Whether the Reference was filed out of time.
 - ii. Whether the Taxing Master's Ruling dated 27th April 2023 should be set aside.

i. Whether the Reference was filed out of time

16. The law on References is found in Rule 11 of the [Advocates \(Remuneration\) Order](#) which provides:-
 - 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.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph 2 for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
17. The Petitioners/Respondents filed a Party to Party Bill of Costs on 7th February 2023 seeking costs in the amount of Kshs 8,128,645/=. The same was opposed by the Applicant through its submissions dated 12th April 2023. In his Ruling dated 27th April 2023, the Taxing Master taxed the Bill of Costs at Kshs 4,047,945/=.
18. Being aggrieved by the decision of the Taxing Master, the Applicant wrote to the Taxing Master a Notice of Objection dated 2nd May 2023 and thereafter filed the present Application on 18th May 2023.
19. I have noted that the Taxing Master did not issue his written reasons to the Applicant to enable them file their Reference as required by Rule 11(2) of the [Advocates \(Remuneration\) Order](#). In my view, the Taxing Master's failure to advance his written reasons was not fatal as the reasons were contained in his Ruling and the Applicant could use the Ruling to formulate his grounds for the Reference. I am persuaded by the following cases; in *Ahmed Nassir v National Bank of Kenya Ltd* (2006) E.A the court held: -

“Although Rule 11(1) of the [Advocates Remuneration Order](#) stipulates that any party who wishes to object to the decision of the Hon. Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of 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 Sub-rule (2) of Rule 11 of the *Advocates Remuneration Order* demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

20. Similarly in *Vincent Kibiwott Rono v Abraham Kiprotich Chebet & another* (2022) eKLR, Nyakundi J. held that:-

“.....There are no reasons that have been presented by the taxing officer as per the provisions of Rule 11(2) of the *Advocates (Remuneration) Order*. However, it is a judicial principle that a ruling contains reasons for the decision given.....”

21. In *Lennah Wanjiku Koinange v Majanja Luseno & Company Advocates* (2013) eKLR, Emukule J. (as he then was) held:-

“.....In such an instance the court, the court of appeal however held in *Kipkorir Titoo & Kiara Advocates V Deposit Protection Fund Board* {2005} 1 KLR 529 that a reference could still be filed in the High Court in the absence of reasons for the award but only where the taxing officer had been served with a notice of objection and had failed after reasonable time, to respond to the same.”

22. With regard to whether the Reference was filed out of time or not, the Respondents submitted that the Reference was incompetent as it had been filed outside the stipulated 14 days. The Respondents further submitted that the Applicant had not given any sufficient reason for the delay and that the Applicant’s intention was to deny them the fruits of their labour.

23. On the other hand, the Applicant stated that it had sought the leave of the court before filing its Reference out of time.

24. I have carefully gone through the court record and I have noted that the Taxing Master delivered his Ruling on 27th April 2023 and the Applicant filed his Reference on 18th May 2023. By a simple calculation, the Applicant filed its Reference one day after the lapse of the statutory 14 day period.

25. According to Rule 11 (1) of the *Advocates (Remuneration) Order*, after the delivery of the Taxing Master’s Ruling, the Applicant had 14 days to give his Objection in writing to the Taxing Master. I have gone through the pleadings and I have found that the Applicant satisfied this Rule when he filed its Written Objection on 11th May 2023. This was within the 14 day period as the Taxing Master had delivered his Ruling on 27th April 2023.

26. In reference to Rule 11 (2) of the *Advocates (Remuneration) Order*, the Taxing Master did not give his reasons other than the Ruling he delivered on 27th April 2023. The Applicant had 14 days after the receipt of the reasons from the Taxing Master to file a Reference to this court. This Rule was not adhered to and as I have already found, the failure by the Taxing Master to give his reasons was not fatal.

27. Turning to the issue of the validity of the Reference, I have gone through the pleadings and there is no Application on record by the Applicant where it sought leave of the court to file its Reference out of time which meant that the Applicant filed the present Application without the leave of this court and in violation of Rule 11(4) of the *Advocates (Remuneration) Order*. As observed earlier, there was no opposing affidavit to the Application.

28. Flowing from the above, it is my finding that the Applicant filed his Reference outside the stipulated 14 day period. It would however serve the interest of justice if this Reference was determined on its



merit. I have come to this decision owing to the lapses in procedure by both parties. I therefore proceed to determine the Reference on its merits.

ii. Whether the Taxing Master's Ruling dated 27th April 2023 should be set aside.

29. The Applicant stated that the Respondents did not produce any receipts in support of their expenditure. I have looked at the Taxing Master's Ruling dated 27th April 2023 and I have noted that all the items that he has taxed are expenses that are provided for under schedule 6 of the Advocates Remuneration Order 2014. The Ruling correctly taxed off items 7, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 36, 37, 38, 39, 40 and 41.
30. Of particular importance to this argument was item 45 in the Bill of Costs. The Respondents wanted Kshs 50,000/= for miscellaneous expenses. The Taxing Master taxed off this item and stated that the expenses were not supported. Therefore the Applicant's ground that the expenditure was not supported by receipts was captured by the Taxing Master in his Ruling. I therefore dismiss this ground.
31. Another ground that the Applicant relied upon was that the value of the subject land was not ascertainable and that the instruction fee was therefore excessive and unjustifiable. The Applicant further stated that the suits relating to the taxation were compromised and did not reach the trial stage.
32. In *Peter Muthoka & another v Ochieng & 3 others* (2019) eKLR, the Court of Appeal held:-

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.

Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.

It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.”

33. Similarly in *Joreth Limited v Kigano & Associates* (2002) eKLR, the Court of Appeal held:-

“.....We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer



is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.....”

34. Flowing from the above, this court is incapable of determining the subject value of the land as it is not in possession of the trial file. This court is also incapable of ascertaining whether the suit was compromised or went to full hearing. This difficulty has also particularly arisen as there was no evidence in the form of a Replying Affidavit.
35. In the best interest of justice and in exercise of my discretion, it is my finding that the Taxing Master is best placed to determine the contentious instruction fee and subsequently the getting up fees upon examining the record from the trial file and considering the respective submissions of the parties.
36. In light of the above, I hereby make the following orders:-
 - i. That the Ruling of the Taxing Master dated 27th April 2023 is hereby set aside and the Bill of Costs filed on 7th February is remitted to the Deputy Registrar of this court for fresh taxation on items 1 and 2 only. For clarity, the current Deputy Registrar of this court did not handle the first taxation.
 - ii. The Certificate of Costs dated 27th April 2023 is set aside.
 - iii. The Notice of Motion Application dated 10th May 2023 has been overtaken by events and is hereby struck out.
37. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 11TH DAY OF APRIL, 2024.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr Kyobika h/b for Mr Mugumya for the Respondent and in the absence of the Applicants. Siele (Court Assistant)

