



**Kitmin Holdings Limited (In Liquidation) v Mohammed Muigai LLP (Miscellaneous Application E101 of 2021) [2024] KEHC 9168 (KLR) (Commercial and Tax) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E101 OF 2021**

**JWW MONG'ARE, J**

**JULY 15, 2024**

**BETWEEN**

**KITMIN HOLDINGS LIMITED (IN LIQUIDATION ..... APPLICANT**

**AND**

**MOHAMMED MUIGAI LLP ..... RESPONDENT**

**RULING**

1. This is a ruling on an application dated 10<sup>th</sup> February, 2021 brought under Rule 11 of the [Advocates Remuneration Order](#) 2014, Schedule 6. The Applicant seeks the following orders:-
  - I. the Court grants Leave to extend the time to entertain this instant motion.
  - II. There be a Stay of Execution of Certificate of Taxation dated 16th November 2020 certifying costs due to the Respondent from the Applicant at Ksh.8,994,074.60/= pending the outcome of this motion.
  - III. That the Certificate of Taxation dated 16th November 2020, be set aside.
  - IV. That the said Bill of Costs dated 8th January 2020, be taxed afresh by a differently constituted Taxing Court, or in the alternative in the interest of justice this Court be pleased to assess/tax the costs lawfully payable by the Applicant on the said Bill of costs.
  - V. That the costs of and incidental to this application be in the cause.
2. The grounds upon which the application is premised are that the Taxing master misapplied the law and principles of taxation by failing to apply the principles and formula provided in Schedule 6 and hence arrived at a manifestly excessive decision. The Applicant contends the taxing master failed to take



into consideration the value of the subject matter as well as the communication between the parties of the fees charged.

3. In support of the said application, Ms. Poonam Varma, a director of the Applicant filed the supporting affidavit sworn on 15<sup>th</sup> February 2021, in which she argues that although the Taxing master decision that was issued on 23<sup>rd</sup> November, 2020 she only managed to get a copy of the ruling detailing the taxing master's decision on 2<sup>nd</sup> February 2021. She faults the taxing master for entertaining the Bill of Costs yet the matter which is the subject of taxation Nairobi HCCC No. 127 of 2016 is pending hearing before the Court and therefore not yet concluded.
4. In opposition to the Application, Mr. Gabriel Mwangi, an Advocate in the Respondent's firm filed a Replying affidavit sworn on 17<sup>th</sup> March, 2021, in which he avers that the Respondent Bill of Costs dated 8<sup>th</sup> January 2020 was taxed at Kshs. 8,994,074.60/= and a Certificate of Costs issued on 10<sup>th</sup> February, 2021. He contends the amount taxed is a fair reimbursement to the Respondent in the conduct of all the matters related to HCCC No. 127 of 2016. He contends that the taxing master considered all material relevant to the suit in taxing the bill of costs.

#### **Analysis And Determination:-**

5. The Court has considered the application as filed, the response thereto and the rival submissions filed by both parties including the oral submissions by the Respondent's counsel and the authorities cited in support and opposition to the application and noted that the following Issues arise for determination, to wit:-
  - i. Whether the court may extend the time of filing a reference.
  - ii. Whether the Court should stay the execution of the Ruling delivered on 23<sup>rd</sup> November 2020, by the Taxing master and the subsequent Certificate of costs issued on 10<sup>th</sup> February, 2021.
  - iii. Whether the bill of costs dated 8<sup>th</sup> January 2020 should be taxed again
  - iv. who should bear the costs of the application?

#### **Extension Of Time:-**

6. Regarding the matter of time extension, clause 11 of the Advocates' Remuneration Order gives the court the authority to prolong the period during which a reference from the taxing master's decision may be filed, notwithstanding the expiry of 14 days. To the mind of the Court, the extension of time is not a right of a party but an equitable remedy that is available to a deserving party who must lay a basis for the extension as was held in the case of the *County Executive of Kisumu Vs County Government of Kisumu & 8 Others* (2017) eKLR.
7. The Applicant has attributed the delay in filing the reference to the delay in obtaining a copy of the detailed ruling entailing the reasons for the decision from the Deputy Registrar despite numerous efforts to acquire the same in good time. In view of the foregoing, I find that the Applicant has established that the failure to file an objection or reference within the prescribed time was not deliberate nor a lack of diligence on its part. I find therefore that the Applicant is deserving of the court's discretion to enlarge the time within which to file the reference.



### Staying Execution Of The Ruling Of 23<sup>Rd</sup> November 2020:-

8. It is not in dispute that the Applicant had instructed the Respondent to represent it in the winding up of Prime Steel Mills Limited for unpaid debts of Kshs.18,275,789.91/=, subsequently Prime Steel Mills Limited filed Nairobi Suit HCCC No. 127 of 2016 demanding a sum of Kshs.304,557,805.34/=.
9. From the Applicant, which the Respondent defended before the Applicant instructed another firm of advocates thus prompting the Respondent to file the Bill of Costs dated 8<sup>th</sup> January, 2020, which was taxed at Kshs.8,994,074.60/= and a certificate of costs issued to that effect on 10<sup>th</sup> February 2021. The Applicant now seeks to stay the execution of the certificate of costs issued.
10. The conditions for granting a stay of execution are stipulated under Order 42 Rule 6 of the [Civil Procedure Rules](#). The order provides the conditions to be considered before granting a stay to wit the following:-
  - a. Whether there is a substantial loss.
  - b. Whether the application has been filed without unreasonable delay.
  - c. Provision of suitable security for due performance of the terms of the decree.
11. As to whether the application was filed without unreasonable delay, the Applicant stated the ruling was issued on 16<sup>th</sup> November, 2020 and a copy of the detailed ruling was received by the Applicant on 2<sup>nd</sup> February, 2021 with the instant application seeking an extension of time being filed on 10<sup>th</sup> February, 2021. Having established that the delay in filing the reference was occasioned by the delay in obtaining a copy of the detailed ruling which is an act beyond the efforts of the Applicant, I find therefore the delay has been adequately explained.
12. As to the issue of substantial loss, the Court notes the amount taxed is Kshs.8,994,074.60/= is a substantial sum which may amount to substantial loss if the Respondent is allowed to execute and in the event the Applicant succeeds in setting it aside, the Applicant may fail to recover the same from the Respondent.
13. The Applicant avers the Deputy Registrar used the wrong principles of law and thus arrived at a wrong figure which was excessive. The Applicant also faulted the Deputy Registrar for failing to consider the Client-Advocate relationship that existed and the legal fees agreed upon by the parties.
14. The issue in the contention is that the Taxing Master erred in principle, by disregarding the provisions as contained in Schedule 6 A 1 (e-f) of the [Advocates Remunerations Order](#) 2014 relating to insolvencies and winding-up and applying the principles of Schedule VI(B) of the [Advocates Remuneration Order](#). That the Deputy Registrar failed to set the basic instructions fee before determining the appropriate fee in the matter and arrived at a wrong decision. The Applicant outlines the errors in the certificate of costs due to the use of wrong principles of law.
15. I am satisfied that the issues raised by the Applicant are pertinent issues that go to the core of the Certificate of Taxation that ought to be unpacked by the Taxing master during fresh taxation, noting that as alleged by the Applicant that the primary matter HCCC No. 127 of 2016 is still pending in court. The court is alive to the fact that whenever the advocate has ceased having the conduct of a matter he/she may proceed to raise a bill of costs in instances where the client refuses to pay. This position was



stated in the Court of Appeal in the case of *Machira & Co. Advocates v Arthur K. Magugu & another* Civil Appeal No. 199 of 2002 [2012] eKLR held that:-

“An advocate whose instructions have been terminated is entitled to immediate payment of his fees for the services rendered. If the client refuses to pay upon demand, he is entitled to file his bill and have it taxed immediately. He does not have to wait until the matter is concluded. He also does not have to depend on the advocate on record to recover his fees for him. The client might compromise with his current advocate on his fees and no bill is filed.”

16. Having regard to the findings and observations captured above, I am satisfied that the Applicant has made out a case for the granting of the orders sought in the application and hereby set aside the ruling dated 16<sup>th</sup> November, 2020. In this circumstance, I allow the application dated 10<sup>th</sup> February 2021 in the following terms:-

- i. The Application herein is admitted as a reference against the taxation proceedings and the ruling of the taxing master delivered on 16<sup>th</sup> November 2020 which is hereby set aside.
- ii. The Advocate - Client Bill of Costs dated 8<sup>th</sup> January 2020 is hereby remitted back for taxation by any other Deputy Registrar other than Hon Aswani Opande.
- iii. The Costs of the application be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF JULY, 2024.**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

1. N/A for the Applicant.
2. Ms. Ogonyo holding brief for Ms. Kaunda for the Respondent.
3. Amos - Court Assistant

