



Kariuki v others; Kiplagat & Kidui Advocates (Advocate); Kariuki (Client) (Miscellaneous Civil Cause E25 of 2022) [2024] KEHC 9691 (KLR) (4 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9691 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
MISCELLANEOUS CIVIL CAUSE E25 OF 2022
SN MUTUKU, J
JULY 4, 2024
IN THE MATTER OF THE ADVOCATES ACT**

AND

**IN THE MATTER OF ADVOCATES/CLIENT BILL OF COSTS ARISING
FROM REPRESENTATION/LEGAL SERVICES IN THE MATTER OF A CIVIL
DISPUTE**

BETWEEN

FRANCIS MURIGHI KARIUKI APPLICANT

AND

LAND REGISTRAR KAJIADO & 2 OTHERS RESPONDENT

AND

KIPLAGAT & KIDUI ADVOCATES ADVOCATE

AND

FRANCIS MURIGHI KARIUKI CLIENT

RULING

Notice of Motion

1. Francis Murighi Kariuki, who is the Applicant in the Notice of Motion dated 17th July 2023, has approached this court through that application seeking the following prayers:
 - i. Spent.



- ii. That the Notice To Show Cause slated for 4th September 2023 be suspended and/or set aside pending the hearing of this application inter partes and determination of this matter.
 - iii. That the Applicant's Notice of Motion dated 7th February 2023 be listed and heard on a priority basis.
 - iv. That costs of this application be provided for.
2. He has supported that application with the grounds that the Respondent has obtained a Notice to Show Cause against the Applicant notwithstanding that the Applicant as a matter of right and law by a Notice of Motion dated 7th December 2022 gave notice to the Taxing Officer to give reasons for the taxation in terms of Rule 11 of the Advocates Remuneration Order which notice did not elicit any response.
 3. They have stated that the Applicants application dated 7th February 2023 is still pending determination and that the Respondent has issued a Notice to Show Cause notwithstanding that no application for entry of judgment in terms of section 51(2) of the Advocates Act has been filed or served on the Applicant.

Replying Affidavit

4. The application is opposed through the Replying Affidavit sworn by Viola Kidui on 2nd October 2023 in which she has deposed that the Applicant filed a Notice of Objection on 14th December 2022 allegedly in compliance with Rule 11(1) of the Advocates Remuneration Order 15 days outside the statutory time; that time allowed without leave of the court and that the Applicants applications dated 7th February 2023 and 17th July 2023 are premised and dependent on the said Objection filed out of time.
5. It is further deposed that the two applications have no basis for the reason that they are based on an Objection filed out of time and without leave of the court and that the application dated 7th February 2023 should be struck out with costs.

Applicant's Submissions

6. The applicant has held the ground that the Taxing Master is mandated to give reasons once an Objection Notice has been issued. He has submitted that there was no material delay in filing the Notice of Objection. He cited Article 159 (2) (d) of the Constitution that justice shall be administered without undue regard to procedural technicalities.
7. It is submitted that as a result of the failure by the Taxing Officer to give reasons, the Respondent took out a Notice to Show Cause why the Applicant should not be committed to civil jail which was slated for hearing on 4th September 2023. It is submitted that under section 51(2) of the Advocates Act, judgment must first be entered for the taxed amount for a decree to issue.
8. The Applicant relied on Amondi & Co. Advocates v. County Government of Kisumu in Kisumu HCMISC. Application No. 153 of 2020 to the effect that section 51(2) of the Advocates Act empowers the court to enter judgment on taxed costs and that a certificate of costs is not enough for execution as it is only after judgment has been entered that a decree can issue. It was submitted that the Respondent was not entitled at this stage to execute in any manner without complying with the provisions of that section.



Respondent's Submissions

9. The Respondent has raised two issues, namely:
 - a. Whether the Applicant's Notice of Objection was filed within the statutory timeline?
 - b. Whether the Taxing Officer is obligated to give further reasons once Objector has issued notice?
10. On the first issue it is submitted that on 29th November 2023, the Taxing Officer delivered a ruling on the advocate/client bill of costs. That the Applicant lodged a Notice of Objection on 14th December 2022; that this was after the expiry of 14 days allowed under Rule 11 of the Advocates Remuneration Order; that in computation of time, where the time required for an action to be taken is more than six days, the first day when an event takes place is excluded in computation of time and if the last day falls on a weekend or a public holiday, then that day is also excluded; that the Applicant ought to have lodged Notice of Objection before 13th December 2022; that 13th December 2022 was neither a weekend nor a holiday and was therefore the last day the Applicant should have issued notice (see section 57(b) of the *Interpretation and General Provisions Act*).
11. It was submitted that the Applicant did not file an application to seek leave to file the Notice outside time. The Respondent relied on *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR to emphasize that point and submitted that the Notice of Objection was filed out of time and therefore a nullity.
12. On the second issue it was submitted that a ruling by the Taxing Officer contains reasons for the determination reached and therefore the Taxing Officer offered reasons for the ruling made on 29th November 2023. The Respondent relied on *Evans Thiga Gaturu v. Kenya Commercial Bank Limited HC Misc Appl. No. 343 of 2011* and *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd (2)* (2006) 1EA 5 where the court held the view that

“...where the reasons for 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.”
13. It was submitted that the Applicant has not demonstrated how the decision of the Taxing Officer was based on an error of principle or that the fee was excessive (see *First American Bank of Kenya v. Shah and Others* [2002] 1 E.A 64 at 69).

Determination

14. The Application under determination is the Notice of Motion dated 17th July 2023. It seeks, inter alia, that the Applicant's Application dated 7th February 2023 be listed for hearing on a priority basis and that the Notice to Show Cause lodge herein be struck out or set aside.
15. I have considered the submissions on both sides on the issue that the Notice of Objection on which the two applications, the one dated 7th February 2023 and the other dated 17th July 2023 are based, was filed within time. It is not disputed that the Notice to the Taxing Officer to give reasons was filed on 14th December 2022. The record shows that the ruling was delivered on 29th November 2022. Fourteen (14) days within which the Notice ought to have been filed was 13th December 2022. I agree with the Respondent on the issue of computation of time.



16. It is clear to this court that the Applicant filed the Notice outside time. He had no leave of the court to do so. The Notice therefore is a nullity.
17. I have considered the Notice of Motion dated 17th July 2023 and the grounds in support of the same as well as the submissions. I have also considered the authorities cited by both parties. It is my considered view that the Applicant has not demonstrated that the Application dated 17th July 2023 is merited. It is therefore dismissed with costs to the Respondent.
18. My view is that parties should have sought to have the two pending applications heard together. Since this was not done, I restrain from pronouncing myself on the Application dated 7th February 2023. Since the Applicant has not submitted on it.
19. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 4TH JULY 2024.

S. N. MUTUKU

JUDGE

