



In re Estate of the Late Devchand Lagdhir Shah (Decesaed) (Succession Cause 961 of 2006) [2024] KEHC 14305 (KLR) (Family) (24 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14305 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 961 OF 2006
HK CHEMITEI, J
OCTOBER 24, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
DEVCHAND LAGDHIR SHAH (DECEASED)

BETWEEN

DHIRALJLAL DEVCHAND SHAH & 4 OTHERS APPLICANT

AND

MAHENDRA DEVCHAND SHAH 1ST RESPONDENT

PARAS VINOD SHAH 2ND RESPONDENT

RULING

1. In their Notice of motion dated 4th March 2021 the Applicants are asking for orders that:-
 - (a) There be a stay of execution and enforcement of the ruling on the party and party bill of costs delivered on the 28th October 2020 in Succession Cause No. 961 of 2006.
 - (b) This court do direct the taxing master to give reasons for the assessment of costs in items 17,18,19,128,144, and 191 of the 1st Respondent's party and party bill of costs dated 25th February 2020 within 14 days.
2. The Applicant prayed for costs as well.
3. The application is based on the grounds thereof and the sworn affidavit of Dhiraljlal Devchand Shah dated 4th March 2021.
4. The gist of the application is that the Taxing Master failed to give reasons on how she arrived at her conclusion in several items as indicated on the face of the application. The Applicant deposes that



he wrote to the said court but there were no reasons as provided under Rule 11 of the Advocate Remuneration Act.

5. The Respondent filed grounds of opposition dated 3rd May 2021 which inter alia opposed the application on the grounds that the Applicants have failed to provide a “notice of objection” within 14 days as provided by the rules.
6. That there was no evidence that the letter dated 29th October 2020 was served upon the Respondents at all and that they do not deserve to be granted any orders of stay.
7. The court has read the application as well as the submissions by the parties together with the cited authorities.
8. I also note that a similar application has been filed by Paras Vinood Shah the fifth Respondent. In my view the outcome of this ruling will as well determine the application dated 8th March 2021.
9. Having stated so I do not intend to spend much time and energy on this matter. It is however unfortunate that the same has taken unnecessarily long time before being resolved.
10. The provisions of Rule 11 of the Advocates Remuneration Order are clear and straight forward. The same states as follows:-

Objection to decision on taxation and appeal to Court of Appeal

- (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.” (Underlining mine)
11. In light of the above portion of the law did the Applicants follow the right procedure? I think the answer is yes.
 12. It is apparent that the Applicant wrote to the Taxing Master a letter dated 29th October 2020, a day after the ruling requesting for reasons why she taxed several items in the manner she did. The said letter did not elicit any response.
 13. The Applicants again wrote another letter dated 24th February 2021 asking for similar reasons but there was no answer.



14. Although the Respondents are of the view that the said letter was never written or served, I think the attachments to the application states as much.
15. Even then I do not see any evidence on record that the Taxing Master gave her reasons as she was expected. In the absence of the same then the Applicants could not mount any objection and file a reference for that matter. The steps provided under Rule 11 cited above are clear.
16. In the premises, I find the application merited. I agree with the Applicant that the many authorities cited herein in opposition to the application will be applicable during the hearing of a substantive reference.
17. Since the honorable Deputy Registrar who undertook this taxation has since been transferred asking her to give reasons as requested by the Applicants will be a tall order and again wasting much time which is already lost.
18. At the same time asking the current Registrar to give reasons in the manner suggested by the Applicants will amount to her sitting on appeal as it were on the decisions of her predecessor.
19. The only logical thing to do is to order fresh taxation to be undertaken. The parties will still have opportunity to interrogate the bill afresh and thereafter, if need be, approach this court.
20. In view of the time this matter has taken, it is necessary to give a time frame in which the fresh taxation ought to be undertaken.
21. In the premises the application is allowed as hereunder:-
 - (a) The taxing masters ruling dated 28th October 2020 with all the attendant consequences is hereby set aside with no order as to costs.
 - (b) Fresh taxation of the bill of costs dated 25th February 2020 be undertaken within 30 days from the date herein by the Deputy Registrar other than Hon P. Mbulika.
 - (c) Costs of this application shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 24TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

