



Murule v SM Onyango & Associates Advocates (Miscellaneous Civil Application E110 of 2022) [2024] KEHC 13550 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E110 OF 2022
MS SHARIFF, J
OCTOBER 25, 2024
IN THE MATTER OF THE ADVOCATES ACT
AND
IN THE MATTER OF THE ADVOCATE-CLIENT BILL OF COSTS
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER, 2019
AND
IN THE MATTER OF REFERENCE FROM THE RULING OF
THE TAXING MASTER OF THE HIGH COURT AT KISUMU**

BETWEEN

ERICK VINCENT MURULE APPLICANT

AND

SM ONYANGO & ASSOCIATES ADVOCATES RESPONDENT

RULING

1. The applicant's notice of motion dated 7th June, 2022 seeks the following reliefs;
 - a. The honourable court be pleased to set aside, vary and or review the court ruling and order of the honourable Linah Akoth, deputy Registrar delivered on 28th April, 2022.
 - b. The court be pleased to re-assess items 7-10, 15-21, 26-28, 21-22, 26-27, 30-32, 37-43, 54-55, 56-68, 98 and 117 of the amended advocate-client bill of costs dated 28th April, 2022.
 - c. The court be pleased to re-assess and re-tax the amended advocate-client bill of costs dated 23rd April, 2022.



- d. In the alternative, the amended advocate-client bill of costs be placed before a different taxing master for re-taxation.
 - e. That costs of this reference be provided for.
2. The application is premised on the grounds on the motion which briefly are; the taxing master delivered her ruling without taking into consideration the applicant's submission especially on items 7-10,15-21, 37-43, 54 and 117. That the taxing master erred in principle by increasing the fee by 50% when the party and party bill of costs had not been taxed. That the taxing master erred by awarding 16% VAT on all taxed items yet he had paid Kshs 50,000/- to cover instructions fees and court fees. That the taxing master erred by allowing items that were incurred on account of the respondent's professional negligence especially on items 16-21, 26-27,30-32and 38-43.
 3. He further states that the taxing master failed to comply with Rule 61 of the *Advocates Remuneration Order*. That the taxing master erred by ignoring the fact that the advocate is only entitled to be paid for work done professionally and not overburdening the applicant with applications which were ultimately futile as provided for under Rule 61 of the *Advocates remuneration order*.
 4. In opposing the bill, Stephanie Akinyi, counsel, filed a replying affidavit deponing inter alia that the value of the subject matter could not be ascertained and the court in allowing Kshs 10,000/- exercised its jurisdiction properly. That VAT is chargeable under the Value Added tax, 2013 as there was supply of services. She depones that services were rendered and the respondent ought to be compensated.
 5. The learned counsel thus prays that the reference be dismissed.
 6. The court directed the parties to file their submissions. The parties complied. The applicant's submissions are dated 12th July, 2023 while the respondent's submissions are dated 9th October, 2023.

Analysis and Determination.

7. I have considered the application, the reply thereto and the submissions by the parties. I note that the instant application is a reference from the decision of the taxing master while assessing the advocate-client Bill of costs. The ruling of the court was delivered on 28/4/2022. The first issue therefore that I will delve into is the propriety of the application under review.
8. Rule 11 of the *Advocates (Remuneration) Order* provides as follows;

Objection to decision on taxation and appeal to Court of Appeal 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.

1. 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.
2. 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.
3. 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.

9. Sub-rule above mandates that the mode of approaching the court shall be by way of chamber summons although in the instant case, the applicant has filed a notice of motion allegedly pursuant to the provisions of Rule 11(1) and (2) of the Remuneration Order.

10. I seek guidance from the decision in Ufundi Co-operative Savings and Credit Society v Njeri Onyango & Company Advocates [2015] eKLR where it was held;

The Applicant argued that this court should ignore the Applicant's failure to adopt the statutory procedures provided by the Advocates Remuneration Order in making a reference to the Judge in Chambers. It quoted, *inter alia*, Article 159 (2) of the *Constitution* which urges the Tribunals to apply substantive justice instead of being dictated by procedural requirement. However, in my view and finding, the matter before the court must first and foremost be properly before the court. Rule 11 of the Advocates Remuneration Order mandatorily requires that before a reference is made to the Judge in Chambers, certain procedures must be followed. If a party deliberately or recklessly fails to comply with the procedures mandatorily required to be followed, he/it cannot be heard to argue that Article 159(2) of the *Constitution* protects such an offender. Indeed such a party cannot argue that it is properly before the court and seeks protection under the said Article 159(2). It would be stretching the principle too far for the court to ignore the statutory mandatory provisions of Rule 11 of the Remuneration order.....

11. I also take cognizance that this issue was not raised by either of the parties but going by the provisions of Rule 11, the prescribe procedure is a chamber summons as opposed to a notice of motion as done in the instant case.

12. Putting all the above into perspective, I come to the irresistible conclusion that the application is incompetent for flouting the mandatory provisions of the Advocates (Remuneration) Order and I therefore disallowed it with costs to the respondent assessed at Ksh.15000.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 25TH DAY OF OCTOBER 2024.

MWANAISHA S. SHARIFF

JUDGE

