Nyachiro t/a M/S Nyachiro Nyagaka Co Advocates v County Government of Nyamira (Miscellaneous Civil Case E005 of 2022) [2023] KEHC 100 (KLR) (18 January 2023) (Ruling)

Neutral citation: [2023] KEHC 100 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYAMIRA

MISCELLANEOUS CIVIL CASE E005 OF 2022

FA OCHIENG, J

JANUARY 18, 2023

BETWEEN

JONES NYACHIRO T/A M/S NYACHIRO NYAGAKA CO ADVOCATES ..... APPLICANT

AND

COUNTY GOVERNMENT OF NYAMIRA ..... RESPONDENT

RULING

1. The parties herein have similar applications in the following 3 matters;
    a. HC Misc. Civil Case No. E002 of 2022;
    b. HC Misc. Civil Case No. E004 of 2022;
    c. HC Misc. Civil Case No. E005 of 2022.
2. Accordingly, this Ruling will apply to the said 3 matters as if separate and distinct rulings were delivered therein.
3. The application before me is dated 13th June 2022, and it was lodged by the Nyamira County Government, (who shall hereinafter be cited as "the client").
4. The application was brought against Jones Nyachiro Trading as M/s Nyachiro Nyagaka & Co. Advocates (who shall hereinafter be cited as "the advocate")
5. The client has asked the court for an order to enlarge the time for lodging a challenge to the ruling of the taxing officer.
6. The client also sought an interim stay of further proceedings, during the time when this application was pending determination.

7. Thirdly, the client asked the court to vary or to set aside the ruling which the taxing officer had made in respect to the items 1, 2, 40, 41, 42, 43, 44, 45, and 46, in the Bill of costs dated 4th January, 2022. It was the request of the client that this court should reduce the sums awarded by the taxing officer, on those specified items.

8. As the client pointed out, on the grounds set out on the face of its application herein, the advocate had, earlier filed an application dated 4th January 2022, asking the court to enter judgment for the taxed costs.

9. The application was supported by the affidavit of James Ntabo Okemwa, who was the County Secretary, Nyamira County Government.

10. In the said affidavit, the deponent put forth arguments which were calculated to persuade this court to set aside or to vary the ruling of the taxing officer.

11. He said that the taxing officer had awarded Kshs. 500,000/- as Instruction Fees, whereas the Advocates Remuneration Order had specified the sum of Kshs. 100,000/- as Instruction Fees on a constitutional petition.

12. In his considered opinion, there was no justification in awarding a sum which was 5 times that which was provided for in the remuneration order.

13. The client further stated that pursuant to Article 201(d) of *the Constitution* of Kenya, public money shall be used in a prudent and responsible way. Therefore, if the client was condemned to pay the costs that the taxing officer had awarded, the County Secretary considers that to amount to an imprudent and irresponsible use of public money.

14. Pursuant to the provisions of paragraph 50 of the Advocates Remuneration Order, a Bill of Costs shall be taxable in accordance with schedule 6;

> ... and, unless the court has made an order under paragraph 50A, where schedule 6 provides a higher and lower scale, the costs shall be taxed in accordance with the lower scale."

15. Paragraph 50A provides guidance regarding the application of the higher scale: it stipulates thus;

> The court may make an order that costs are to be taxed on the higher scale in schedule 6 on special grounds arising out of the nature and importance or the difficulty or urgency of the case. The higher scale may be allowed either generally in any cause or matter or in respect of any particular application made or business done."

16. Therefore, when the taxing officer awards costs on a higher scale, whilst the court had not made an order in that respect, the party against whom the bill had been taxed may file a reference to challenge the ruling of the taxing officer.

17. The reference must be filed within 14 days from the date when the taxing officer delivered his Ruling.

18. However, if the ruling did not contain reasons within it, the time for filing of the reference would be calculable from the date when the taxing officer delivers his reasons; and that would have been prompted by a letter from the aggrieved party, in which the taxing officer was asked to given reasons in respect to specified items on the bill of costs.

19. In this case, the client did not file a reference within the period provided for by law. It was for that reason that the client sought an enlargement of time, to enable it file its intended reference.

20. The client did not canvass that aspect of its application. It did not seek to explain the delay in filing the reference.

21. Accordingly, the court finds itself unable to enlarge the time for the filing of the reference.

22. The submissions which were made on the substance of the intended reference were premature: they put the cart before the horse.

23. In the result the chamber summons dated 13th June, 2022 is dismissed. The client will pay to the advocate, the costs of the said application. I so hold because I find no reasons to deviate from the cardinal rule which stipulates that ordinarily costs should follow the event.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF JANUARY, 2023.

FRED A. OCHIENG

JUDGE

I certify that this is a true copy of the original

DEPUTY REGISTRAR