



Molyn Credit Limited v Odeny Maube & Company, Advocates (Miscellaneous Civil Case E024, E025 & E026 of 2022 (Consolidated)) [2023] KEHC 17220 (KLR) (12 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CIVIL CASE E024, E025 & E026 OF 2022 (CONSOLIDATED)
WM MUSYOKA, J
MAY 12, 2023**

BETWEEN

MOLYN CREDIT LIMITED APPLICANT

AND

ODENY MAUBE & COMPANY, ADVOCATES RESPONDENT

AS CONSOLIDATED WITH

MISCELLANEOUS CIVIL CASE E025 OF 2022

BETWEEN

MOLYN CREDIT LIMITED APPLICANT

AND

ODENY MAUBE & COMPANY, ADVOCATES RESPONDENT

AS CONSOLIDATED WITH

MISCELLANEOUS CIVIL CASE E026 OF 2022

BETWEEN

MOLYN CREDIT LIMITED APPLICANT

AND

ODENY MAUBE & COMPANY, ADVOCATES RESPONDENT



RULING

1. The causes herein were initiated by the applicant, by way of chamber summonses, dated March 31, 2022, to challenge taxation of a bill of costs in Busia High Court Miscellaneous Civil Cases Nos. E059, E060 and E061 of 2021, and specifically seeking stay of execution for the taxed costs, review of the taxation orders and re-taxation. It is argued that the taxing officer did not consider the applicant's submissions, did not consider whether the applicant was a party to the parent suits for the purposes of Advocate's costs, among others.
2. In response to the summonses, the respondent filed preliminary objections, dated July 4, 2022, on grounds that the same were filed without compliance with Rule 11(1) of the *Advocates (Remuneration) Order*, the causes were initiated outside the timelines set out in Rule 11(2) of the *Advocates (Remuneration) Order*, and memoranda of appeal were filed together with the references.
3. The principal objection is that the causes herein are not competent, and ought not be entertained.
4. Rule 11 of the *Advocates (Remuneration) Order* sets out the framework for filing of challenges to a taxation by a taxing officer. The Rule provides 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.”
5. The framework details the steps to be taken. It starts with Rule 11(1), by the party aggrieved, writing to the taxing officer, after the decision on taxation is rendered, giving notice of the items in the taxation that it objects to. Rule 11(2) then follows. Upon the taxing officer receiving the objection, he should record the reasons for the decision on the items objected to, and forward the record of the reasons to the objecting party. Should the objector not be satisfied with the reasons given, there is liberty, within 14 days, to apply to the Judge, by way of what is popularly known as reference, for review or setting aside or whatever, of the decision of the taxing officer on the items objected to. Rule 11(3) kicks in where the Judge renders a decision on the reference, which aggrieves any of the parties. Such aggrieved



- party has a right of appeal, under Rule 11(3) to the Court of Appeal, with leave of the Judge. Rule 11(4) empowers the High Court to expand the timelines set in Rule 11(1)(2).
6. Litigation under Rule 11 is progressive. It goes step by step. It starts with the step under Rule 11(1), followed by Rule 11(2), and then Rule 11(3) consequently, there can be no reference to the Judge of the High Court without the reasons given by the taxing officer, and the taxing officer cannot give reasons unless prompted under Rule 11(1). It is the objection to the taxing officer which triggers the reference, much the same way that the decision of the Judge on the reference triggers the appeal to the Court of Appeal. A reference cannot be mounted under Rule 11(2), by way of jumping the step in Rule 11(1). I have not seen a provision in the Advocates Remuneration Order which allows the bringing of a reference without first complying with Rule 11(1). It is the reaction by the taxing officer, to the objection, that ought to trigger the filing of the reference. A reference filed by sidestepping Rule 11(1) hangs in the air. Such a reference, commenced without complying with Rule 11(1), is incompetent.
 7. The other aspect is on the timelines. The timeline under Rule 11(1) relates to the bringing of objection within 14 days of the taxing officer rendering verdict on the bill being taxed. The timeline under Rule 11(2) relates to the filing of reference on the decision of the taxing officer, it should be filed within 14 days of receipt of the reasons on the taxation, given by the taxing officer. Rule 11(4) empowers the Judge to expand or extend those timings.
 8. It cannot be said, in this case, that the applicant initiated the cause herein within the set timelines. Firstly, the timeline in Rule 11(1) was not complied with, for no notice of objection was given to the taxing officer. Secondly, the timelines under Rule 11(2) could only be legitimately complied with, where those in Rule 11(1) have been complied with. The timeline in Rule 11(1) is specific to Sub-Rule (1), and the issue of collapsing it into the timeline under Rule 11(2) does not arise, and there is no legal basis for it.
 9. The argument on the memorandum of appeal eludes me. Because I have not come across a memorandum of appeal in this cause. I presume that the memorandum of appeal was probably filed in another cause, not in the present. In any case, an appeal does not lie, and cannot lie, from the determination by the taxing officer, to the Judge of the High Court. The taxing officer sits as an officer of the High Court, and it would be awkward to have an appeal filed in the High Court against a decision of the High Court. It is for that reason that Rule 11(2) provides for a reference to the Judge, rather than an appeal. The appeal referred to in Rule 11(3) is to the Court of Appeal, from the decision of the Judge of the High Court on the reference.
 10. There is merit, therefore, in the preliminary objections. The references herein are not properly founded. They are for striking out, and I hereby strike them out, with costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 12TH DAY OF MAY 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Achero, instructed by Achero Mufuayia & Company, Advocates for the applicant.

Ms. Akinyi, instructed by Bruce Odeny & Company Advocates for the respondent.

