



**High Flyer Services and Publishers Limited & another v Mwangi & 4 others
(Miscellaneous Application E614 of 2022 & Miscellaneous Civil Application 259 of 2018
(Consolidated)) [2023] KEHC 19410 (KLR) (Commercial and Tax) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E614 OF 2022 & MISCELLANEOUS
CIVIL APPLICATION 259 OF 2018 (CONSOLIDATED)**

DO CHEPKWONY, J

JUNE 14, 2023

BETWEEN

HIGH FLYER SERVICES AND PUBLISHERS LIMITED APPLICANT

AND

PETER GICHUKI MWANGI RESPONDENT

AS CONSOLIDATED WITH

MISCELLANEOUS CIVIL APPLICATION 259 OF 2018

BETWEEN

PETER GICHUKI MWANGI PLAINTIFF

AND

THE KENYA COPYRIGHT BOARD 1ST DEFENDANT

THE HON ATTORNEY GENERAL OF KENYA 2ND DEFENDANT

ANTHONY GITHIACA KIAI 3RD DEFENDANT

HIGH FLYER SERVICES AND PUBLISHERS LTD 4TH DEFENDANT



RULING

1. This ruling is in respect to the chamber summons application dated August 29, 2022 filed pursuant to paragraph 11(1) and (2) of the [Advocates Remuneration Order](#) seeking the following orders:
 - a) That this honourable court be pleased to review, vary and set aside the decision of the taxing officer dated August 11, 2022 that struck off the applicant's party and party bill of costs dated September 15, 2021.
 - b) That the said party and party bills of costs dated September 15, 2022 be remitted to the taxing officer or a different taxing officer with directions for fresh taxation.
 - c) That the costs of this application be provided for.
2. The application is based on the grounds set out on its face and the supporting affidavit of Anthony Githiaka Kiai sworn on August 29, 2022.
3. The applicant argues that on August 11, 2021 the Deputy Registrar struck off its bill of costs dated September 15, 2021 which decision was based on the ruling of September 27, 2018 that dismissed the respondent's application for orders for extension of time to file suit out of time. The applicant states that when plaintiff's application for extension of time was dismissed, the plaintiff filed an application for review of the orders dated September 27, 2018 which was also dismissed on May 2, 2019 but costs were awarded.
4. The applicant argues that the Deputy Registrar wrongly relied on the ruling of September 27, 2018 whereupon she held that costs had not been awarded as a basis to strike out the bill of costs without examining all the documents filed in respect to that bill of costs. The applicant holds that the court should consider the reference which has been made without unreasonable delay.
5. The respondent opposed the application *vide* grounds of objection dated February 3, 2023 and a replying affidavit sworn by Peter Gichuki Mwangi on February 7, 2023.
6. In the grounds of objection, the respondent argues that the application discloses no cause of action and has been overtaken by events since no appeal has been filed. The respondent also argues that the applicant should have filed an appeal if they were aggrieved with the decision instead of an application for review.
7. In the replying affidavit, the respondent reiterates the points in the grounds of objection and holds that the application should be dismissed since it is *res judicata*, that there is multiplicity of applications, it has been filed in the wrong court and cannot stand on its own.
8. In the submissions, the applicant holds that the application is timely having been filed within 14 days from the date of the issuance of the reasons for the taxation order as contemplated under rule 11 (1) and (2) of the [Advocates Remuneration Order 2010](#). The applicant further holds that the Deputy Registrar misapprehended the law under section 27 of the [Civil Procedure Act](#) which states that 'costs shall follow the event' when she held that costs had not been awarded in the ruling.
9. On his part, the respondent holds that the application has been filed like an appeal from the ruling of the deputy registrar through the back door without filing an actual appeal by filing a fresh miscellaneous application for review. The respondent holds that the application for review ought to



have been filed under the same case number of the bill of costs being Misc application No 259 of 2018 and not the current form. The respondent contends that the application is *res judicata* having already been determined and that it has been filed in the wrong court, jurat and in the wrong file.

10. On February 6, 2022, the parties were directed to dispose of the application by way of written submissions. The applicant's submissions are dated February 28, 2022. The respondent's also filed their submissions.

Analysis and Determination.

11. To determine this application, this court will start by providing an overview of the case. The respondent herein filed an application dated June 4, 2018 seeking leave to file suit against the respondents out of time. Hon Makau J. dismissed the application with no orders on costs. Being aggrieved with the ruling, the respondent filed yet another application dated October 30, 2018 seeking a review of the said orders and it was again dismissed with costs on October 30, 2018.
12. The applicant then filed the bill of costs dated September 15, 2021 which the Deputy Registrar in her ruling of August 11, 2022 the Deputy Registrar held that had not been awarded in the ruling of September 27, 2018 and thereby struck out the bill of costs.
13. The applicant has now moved the court seeking to have the decision of the deputy registrar reviewed, varied and/or set aside and for the remission of the bill of costs to another deputy registrar for rehearing.
14. The procedure of moving the court in respect of a decision by a taxing officer regarding a bill of costs was highlighted in the case of *Hezekiel Oira T/A H. Oira Advocate v Kenya Broadcasting Corporation* [2015]eKLR which cited *Karuturu Networks Ltd & another v Dally Figgis Advocates*, Nairobi Court of Appeal CA No 293/2009, where it was held that:-

“It is a basic principle of procedural law that appeals to the High Court only lie where a right of appeal has been conferred by statute. Secondly, I as understand the practice relating to taxation of bill of costs, any complaint about any decision of the taxing officer whether it relates to appoint a law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the judge in accordance with paragraph 11 of the Advocates Remuneration Order”

15. It is trite law that courts should not interfere with the decision of the taxing officer unless it was based on an error in principle. See *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, where this court observed;

“On reference to a judge from the taxation by the taxing officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”

16. In this case, it is common ground that costs were not awarded in the ruling of September 27, 2018 as the application was dismissed with ‘no orders as to costs’. However, the second ruling of May 2, 2019 which dismissed the application dated October 30, 2018 costs were awarded. Therefore, in this suit, the respondents now applicant herein were entitled to the costs but only for that application dated October 30, 2018 since no suit was filed as the application for leave to file suit out of time had been denied. The applicant is now only entitled to costs in respect to the notice of motion dated October 30, 2018.



17. In that regard, this court finds that the deputy registrar erred in basing her decision on the ruling of September 27, 2018 instead of the one delivered on May 2, 2019 which awarded costs.
18. Consequently, the bill of costs is hereby remitted to another deputy registrar for determination. With regard to the position that the matter is *res judicata*, the court dismisses the claim for the reason that the issue of the bill of costs herein has not been determined by any other court.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 14TH DAY OF JUNE, 2023.

D. O. CHEPKWONY

JUDGE

