



REPUBLIC OF KENYA



**KENYA LAW**  
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**UAP Insurance Company Limited v Karisa & another (Miscellaneous Civil Application 43 of 2021) [2023] KEHC 21663 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21663 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS CIVIL APPLICATION 43 OF 2021**

**SM GITHINJI, J**

**JULY 19, 2023**

**BETWEEN**

**UAP INSURANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**JOSEPH MBOGO KARISA ..... 1<sup>ST</sup> RESPONDENT**

**FENUS CHARO KARISA ROBERT ALIAS FENUS CHARO . 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court for determination is the Applicant's notice of motion application dated August 31, 2022 brought under Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 10 rule 11, Order 22 rule 22 and Order 51 rule 1 of the *Civil Procedure Rules*. The orders sought are tailored as follows; -
  1. Spent.
  2. Spent.
  3. That the honourable court be pleased to set aside the ex-parte ruling delivered on the August 24, 2022 and allow the Applicant herein to object the Respondent's bill of costs dated September 18, 2021.
  4. That there be a review of the ruling delivered on August 24, 2022 taxing the Respondents Bill of costs at Kshs. 149,253/- by considering our merited submissions filed on the July 20, 2022 objecting the Bill of Costs dated the November 18, 2021.
  5. That costs of this Application be provided.
2. The application is premised on the grounds on the face of it and the supporting affidavit sworn on August 31, 2022 by Mr. Mayieka Momanyi, counsel for the Applicant. Mr. Momanyi deposed that on May 20, 2021, his firm filed an application for leave to file a declaratory suit, application which



was dismissed with costs to the Respondents on October 14, 2021. Consequently, the 2<sup>nd</sup> Respondent filed a party and party bill of costs dated November 18, 2021. On June 28, 2022 when the bill was listed for taxation, the Applicant sought leave to file their submissions which they filed on July 20, 2022. Subsequently, a ruling was delivered electronically on August 24, 2022 indicating that the bill was unopposed which, Mr. Momanyi deposed, was not the case.

3. Opposing the application, the 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn on October 5, 2022 by Mr. Geoffrey Kilonzo, counsel for the Respondent. According to Mr. Kilonzo, the Applicant was granted leave to file submissions within 14 days which lapsed on July 12, 2022. Therefore, the submissions alleged to have been filed on July 20, 2022 were not admitted on record.
4. The application was canvassed by way of written submissions.

### **The Applicant's Submissions**

5. Counsel for the Applicant submitted that, as it was held in *Tokesi Mambili and others v Simion Litsanga quoted in Kiarie v Waiganjo* [2004] eKLR, in an order to obtain a review, an applicant had to show that there was discovery of new and important matter which was not within his knowledge when the order was made; that there was a mistake or error apparent on the record; or for any other sufficient reason.
6. Counsel argued that there was an error apparent on the part of the court for failure to consider the Applicant's submissions thus denying them the right to fair hearing. To him, that amounted to sufficient cause to have the ruling on taxation reviewed.

### **2<sup>nd</sup> Respondent's Submissions**

7. Counsel for the Respondent largely reiterated the grounds of opposition highlighted in the replying affidavit. He argued that the bill was taxed to scale in accordance with the Advocates Remuneration Order, by a court of competent jurisdiction and that the Applicant will not suffer any prejudice.

### **Analysis and Determination**

8. The issues I find for determination are as follows:
  - i. Whether this court can interfere with the decision of the Tax Master delivered on August 24, 2022.
  - ii. Whether the orders sought are merited.
9. On the first issue, the law is clear that where a tax master explains how she or he exercised her/his discretion in determining the amount due, the High Court should not interfere unless the tax master erred in law or in principle. See *First American Bank of Kenya Vs Shah and Others* [2002] E.A.L.R 64 AT 69. The Applicant alleged that the tax master had ignored their submissions totally by taxing the bill ex-parte, thus causing a miscarriage of justice and violation of their right to a fair hearing.
10. A perusal of the proceedings indicates that on June 28, 2022, the bill was listed for mention when Mr. Mayieka successfully sought 14 days to file written submissions. The matter was to be mentioned again on July 26, 2022 for purposes of taking a ruling date. On that date, the Applicant was marked absent, and a ruling date was given. Notably, the Applicant filed their submissions on July 20, 2022, approximately 8 days outside the time given and 1 month before the ruling was delivered.



11. It is also evident from the said ruling that the taxing master did not consider the objection by the Applicant. She noted as follows;-

“...the court being satisfied that the Applicant had been duly served with the Bill of Costs vide the return of service sworn by Samson Nyandika Nyangena on June 15, 2022 but had failed to file their objections proceeded to tax the bill *ex-parte*.”

12. Bearing in mind that the Applicant’s submissions were received by the court’s registry even before the matter was last mentioned on July 26, 2022, it is my view that the Applicant had legitimate expectation that their objections will be considered by the taxing master. In the circumstances and in the interest of justice, I find the application merited. The ruling delivered on August 24, 2022 is set aside. The bill is to be returned to the taxing master for re-taxation, taking into consideration the applicant submissions.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 19<sup>TH</sup> DAY OF JULY, 2023.**

.....

**S.M. GITHINJI**

**JUDGE**

**In the Presence of: -**

Mr. Kilonzo for the Respondent.

Mogaka Omwenga & Mabeya Advocates for the Applicant

Wambua Kilonzo Advocates for the Defendant

