



Republic v Medical Practitioners and Dentists Council & another; Divine World Parish Health Centre & 2 others (Exparte); Wabuti (Interested Party) (Application E073 of 2021) [2023] KEHC 22513 (KLR) (Judicial Review) (25 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E073 OF 2021
J NGAAH, J
SEPTEMBER 25, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE MEDICAL PRACTITIONERS AND DENTISTS COUNCIL 1ST
RESPONDENT**

**DIRECTOR GENERAL DISCIPLINARY & ETHICS COMMITTEE 2ND
RESPONDENT**

AND

DIVINE WORLD PARISH HEALTH CENTRE EXPARTE

ANDERSON KIPCHUMBA KAGAI EXPARTE

GRACE APIYO OTIENO EXPARTE

AND

STEPHEN WANYANGA WABUTI INTERESTED PARTY

RULING

1. The application before court is a chamber summons dated 18 May 2023 according to which the applicants seek extension of time to file a reference challenging the decision of the taxing officer on the taxation. The applicants have also sought an order from this Honourable Court to stay the process of execution by the interested party following a decision of the taxing officer dated 20 April 2023 taxing



- the interested party's party and party bill of costs dated 23 December 2022 at 294, 317/=. This latter prayer has been overtaken by events.
2. The application is brought under paragraph 11 (2) and (4) of the *Advocates (remuneration) Order*, Order 50 rule 5 of the *Civil Procedure Rules*, section 3 A of the *Civil Procedure Act* and it is supported by the affidavit of Mercy Teresa Nyawira Wangui sworn on 18 May 2023.
 3. The crux of the applicant's application is that their notice of motion dated 18 May 2021 was dismissed with costs on 16 December 2022. Subsequently, the interested party filed a party and party bill of costs according to which he was awarded the sum of Kshs. 295,400/=.
 4. The applicants would have contested this taxation but they only came to learn of the taxing master's decision much later.
 5. It is their case that the learned taxing master had indicated to parties that her ruling would be delivered on 21 February 2023. However, on this particular date, parties were informed that the ruling would be delivered electronically on 20 April 2023. But the ruling was never sent to the parties as promised.
 6. The applicants came to learn of the ruling on 4 May 2023 when the interested party was informed them that he was in the process of execution to recover the sum awarded by the taxing master. By this time, the period within which the applicants ought to have filed a reference had lapsed. And it is for this reason they now seek extension of time to file the reference.
 7. The interested party filed what he has referred to as "grounds of opposition" opposing the applicants' application. But those grounds, though captioned as such are more or less, submissions.
 8. What I gather from these "grounds" is that the application is contested because the applicant has not first filed a notice to object to the taxation. According to the interested party:

"...first step is to write to the taxing master indicating the items of taxation one objects to and thereafter a reference is filed 14 days after receipt of the taxing master's reasons for his decision with regard to the items being objected to."
 9. Here the interested party is referring to paragraph 11(2) of the *Advocates Remuneration Order*. According to the respondent, since the applicant has not yet written to the taxing master indicating the items in the bill of costs they are objecting to they cannot file a reference even if leave to extend time was granted.
 10. One other thing I have observed in the interested party's submissions, is that he does not contest that the applicants' allegations that they only came to learn of the taxing master's decision on 4 May 2023, long after the period within which the applicants could have filed the reference had lapsed.
 11. Now, if the ruling was not given to the applicants in time to contest it, there can be no reason why they should not be given opportunity to do so. The simple reason is that the delay in making the relevant application was not of their own making but the court's. They should not be punished for a mistake that is attributed to court.
 12. As to whether the applicants ought to file a notice objecting to taxation of specific items in the bill of costs, I would say it is not necessary considering that the taxing officer's decision sought to be challenged has given reasons for taxation.
 13. I have addressed this question in several cases the most recent one being High Court Judicial Review Application No. E063 of 2021, *Republic v Public Procurement Administrative Review Board &*



Another; ex parte; Sports, Arts & Social Development Fund. I can do no more than reproduce here what I have said in those cases.

14. Paragraph 11(1) of the *Advocate Remuneration Order* provides room to a party who is dissatisfied with the decision of a taxing officer to object to that decision. The objection must specify the particular items to which an aggrieved party objects and where such an objection has to be taken, it must be done within 14 days of the date of the taxing officer's decision. This paragraph reads as follows:
 1. should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of the taxation to which he objects.
15. Paragraph 11(2), on the other hand, enjoins the taxing officer to respond to the objection and, in his response, give reasons why and how he came to tax the disputed items the way he did. Once he receives the reasons, the objector will have fourteen days within which to file a reference to a judge in chambers. This subparagraph reads as follows:
 - (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 14 days from the receipt of the reasons apply to a judge by a chamber summons which shall be served on all the parties concerned setting out the grounds of his objection.
16. In consideration of the question whether an objection has, in every case, to precede a reference to challenge a taxation of a bill of costs decision, it is necessary and, indeed, they are better understood if subparagraphs (1) and (2) are read together.
17. What emerges from these subparagraphs is that there is nothing untoward when taxing officer taxes a bill without giving any reasons on why and how he taxed the entire bill or any items thereof in the manner he did. He may, for instance, simply say "the amount taxed on item 1 is such and such amount" without saying anything more. It is in such a case that a party who is aggrieved by the taxation will file an objection against the taxation and thereby enjoin the taxing master to go further and give his reasons for taxation.
18. It is also apparent from these two subparagraphs that the grounds upon which a reference can be mounted would, ordinarily, arise from the reasons proffered by the taxing master for his decision. Dissatisfaction with the taxation per se is not necessarily a ground to file a reference. It is after reasons for taxation have been given that an aggrieved party may found a cause for the reference.
19. What this implies is that it is possible that a party may not be satisfied with the taxation of any particular item or items in the bill of costs. But his doubts on the validity of the taxation may be removed after the taxing master has explained himself and given reasons for taxing the disputed items in which event it will not be necessary to proceed any further and file a reference or chamber summons challenging the decision of the taxing master. He will only take this step if he is not satisfied with the explanation or the reasons given by the taxing master.
20. It follows that where reasons for taxation of the bill or any particular items are given in the decision of the taxing master, the objection serves no other purpose than, perhaps, inform the taxing master that a party to proceedings before him is dissatisfied with his taxation. But such information may not serve any useful purpose since the taxing master is not required to take any further action on an objection that may be served upon him after he has already given reasons for his decision. Lodging of the notice of objection, in these circumstances, would be superfluous, to say the least.



21. In the instant case the taxing master has given reason for taxation. As a matter of fact, the ruling is captioned, “ruling and reasons for taxation on the party and party bill of costs dated 23rd December 2022”.
22. It follows that, it would be an absurdity to interpret, as the interested party suggests, paragraph 11 (2) as requiring the taxing master to give reasons that are already contained in his decision on taxation.
23. Nonetheless, if for whatever it is worth, the applicant feels bound to serve the objection in compliance with paragraph 11(2), nothing stops him from doing so. However, it would be irrational on his part for him to sit pretty, after service of the objection, waiting for the taxing master to respond to the objection and give reasons that have otherwise been given in the taxing master’s decision. The clock for filing the reference starts ticking the moment the applicant receives the reasons.
24. I am unable to agree with the applicant that a reference would be rendered incompetent merely because it is not preceded by an objection even in a case where the taxing master has given reasons in the initial decision on the taxation in issue.
25. As I have noted, the reasons are necessary, in part, to challenge the taxation and where they have been given, nothing stands in the way of an aggrieved party to mount a challenge against the decision of the taxing master without, first, lodging an objection.
26. For reasons I have given, I allow the applicants’ application. The applicants are granted 14 days from the date of this order to file and serve a reference challenging the taxing officer’s decision on taxation of the party and party bill of costs dated 23 December 2022. Parties will bear their respective costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 25 SEPTEMBER 2023.

NGAAH JAIRUS

JUDGE

