



**Tumaz & Tumaz Enterprises Limited v Sarrai Group (Application 178 of 2021)
[2024] KEHC 13709 (KLR) (Judicial Review) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13709 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION 178 OF 2021
J NGAAH, J
OCTOBER 11, 2024**

BETWEEN

TUMAZ & TUMAZ ENTERPRISES LIMITED APPLICANT

AND

SARRAI GROUP RESPONDENT

RULING

1. The applicant's application is a chamber summons dated 15 May 2024 brought to this Honourable Court under paragraph 11(1) and (4) of the Advocates Remuneration Order, 2014. It seeks the following orders:
 - “1. That the Applicant be granted leave to file a Taxation Reference to this Honourable Court against the Ruling of the Honourable Court's Taxing Officer delivered on 23rd April, 2024.
 2. That the leave granted in prayer (1) above do operate as stay of execution of the Ruling of the Taxing Officer aforesaid and any other consequential proceedings.
 3. That the Application for Reference annexed hereto be deemed as duly filed and served upon payment of requisite fees.
 4. That the costs of this application be in the cause.”
2. The application is supported by the affidavit of Mr. Javier Munzala who states that he is an advocate of this Honourable Court and that he is on record for the applicant. Mr. Munzala has also sworn that



on 23 April 2024 the taxing officer delivered a ruling on a party and party bill of costs. The bill was taxed at Kshs. 1,015,260.00.

3. A copy of the ruling was, however, not given to the applicant's advocates until 15 May 2024 by which time the 14-day period prescribed under paragraph 11(1) of the Advocates Remuneration Order for seeking a reference had expired.
4. Accordingly, there was a delay of 15 days in filing the reference. Mr. Munzala has sworn that the applicant ought to be granted extension of time because he has explained the reasons for the delay and, in any event, the delay is not inordinate. Counsel has also sworn that failure to file a reference within the prescribed time was beyond his control and that the consequences of the failure should not be visited upon his client.
5. In response to the application, the respondent filed grounds of objection. The respondent has averred that the application for leave is vexatious and that there is no explanation given for the late filing of the application for leave. The respondent has also pleaded that there is no allegation the taxing officer erred in principle in her decision and neither has the applicant demonstrated any sufficient grounds to impugn the exercise of judicial discretion by the taxing officer to warrant the Honourable Court's interference. The application is also opposed on the ground that the applicant has not offered any security for costs and that there is no provision in law for stay of execution of taxed costs.
6. The limitation period within which an objection to the taxation and a reference to the judge may be filed is prescribed in paragraph 11 of the Advocates Remuneration Order, 2014; this paragraph reads as follows:
 11. 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.
7. According the learned counsel for the applicant, although the ruling on the impugned taxation was delivered on 23 April 2024, it was not until the 15 May 2024 that he received a typed copy of the ruling.
8. Under paragraph 11(1), the applicant would have been enjoined to file an objection by 7 May 2024 which was the fourteenth day from the date of delivery of the ruling. According to paragraph 11(2), he would have filed the reference within fourteen days from the date of the receipt of the reasons for taxation.



9. But a copy of the ruling of taxing officer exhibited to the applicant's affidavit shows that it contained reasons for the taxation and, therefore, it would not have been necessary for the applicant to lodge an objection under paragraph 11(1). I say so because the objection contemplated under this subparagraph serves to, inter alia, provoke the reasons for the taxation from the taxing master and it is only after the reasons have been given that the reference may be filed. It follows that the since the reasons are contained in the ruling, the reference ought to have been filed by 7 May 2024. Thus, by the time the applicant obtained a copy of the ruling on 15 May 2024, he was eight days late in filing the reference.
10. The respondent did not file any replying affidavit contesting the fact of when the applicant obtained a typed copy of the ruling of the taxing officer. That being the case, I am entitled to proceed on the assumption that the delay in filing the reference was caused by circumstances beyond the applicant's control.
11. Accordingly, I hereby allow the applicant's application to the extent that the time which the reference ought to have been filed is hereby extended. The applicant shall file and serve the reference within seven days of the date of this ruling. The respondent's response shall be filed and served within seven days of the date of service of the reference. The matter shall be mentioned on 20 November 2024 for further directions. Costs of this application will abide the outcome of the reference. It is so ordered.

SIGNED, DATED AND DELIVERED ON 11 OCTOBER 2024

NGAAH JAIRUS

JUDGE

