



Gervia Advocates LLP v Yang Guang Property Design & Manufacturing Limited (Miscellaneous Application E644 of 2022) [2024] KEHC 15219 (KLR) (Commercial and Tax) (5 November 2024) (Ruling)

Neutral citation: [2024] KEHC 15219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E644 OF 2022
NW SIFUNA, J
NOVEMBER 5, 2024**

BETWEEN

GERVIA ADVOCATES LLP APPLICANT

AND

YANG GUANG PROPERTY DESIGN & MANUFACTURING LIMITED RESPONDENT

RULING

1. This is a Taxation Reference. The same which was brought by way of the Chamber Summons dated 7th September 2022 was filed pursuant to Rule 11(2) of the Advocates (Remuneration) Order. It has prayed for an order to set aside the taxation decision delivered by Hon Stephanie Bett on 28th July 2022, which struck out the Bill of Costs dated 10th March 2022. It has also sought an order referring the said Bill back to taxation.
2. The Applicant argued that the taxing master erred in finding that there was no advocate-client relationship between the Applicant and Respondent despite the fact that no such issue was raised by the Respondent as a preliminary.
3. In opposition to the Application, the Respondent filed a preliminary objection dated 21st February 2023, in which it asserted that this Court lacks the jurisdiction to entertain this Reference as it was filed out of time.

Analysis and Determination:

4. The Preliminary Objection was canvassed by way of written submissions. The Applicant's submissions are dated 14th April 2023. The Respondent's submissions are of even date.



5. The Applicant submitted that the ruling and reasons of the taxing master were delivered on 28th July 2022. That therefore this instant Reference ought to have been filed within 14 days from that date. It was submitted that the deadline for filing the reference was 11th August 2022.
6. The Respondent has argued that this Reference was filed on 7th September 2022 and that no leave was sought nor reasons given for the lateness, hence that the Reference ought to be dismissed.
7. In response, the Applicant submitted that the Reference was filed within the timelines stipulated under rule 11(2) of the Advocates Remuneration Order.
8. It argued that after the taxing master delivered her ruling on the bill of costs on 28th July 2022, it wrote a letter on 11th August 2022 requesting for reasons for the taxation which sufficed for a notice as required under Rule 11(2) of the Advocates Remuneration Order.
9. Rule 11(1) and (2) of the Advocates Remuneration Order states as follows:
 - (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.”
10. In this case, the taxing officer Hon E.M. Nyakundi (Deputy Registrar) issued her decision on the Applicant’s Bill of Costs on 28th July 2022. Her decision was titled ‘ruling and decision for taxation’ and she held:

“The applicable law is schedule 11part B of the Advocates (Remuneration) (Amendment) Order 2014. A look at the Applicant’s supporting documents together with all the items on the Bill of Costs shows no instructions other than the items drawn by the Advocate.”
11. The Respondent has in urging that Reference was time-barred, stated that the Taxing Officer’s said decision not only included her decision on the Bill of Costs, but also the reasons behind that decision. It further argued that the Applicant who was dissatisfied with the decision and its reasoning had the opportunity to lodge a Reference against it to this Court within 14 days.
12. The Applicant by its letter of 11th August 2022 requested for reasons for the decision. This the Respondent argued was absurd as according to it, the reasons had already been provided in the decision of the Taxing Officer.
13. Therefore that by the time the Applicant filed this Reference, the timeline provided under Rule 11(2) of the Advocates Remuneration Order had already lapsed.
14. Those are very convincing arguments, but in my view even where facts are as that and a party has written to the Taxing Officer and asked for reasons, the Taxing Officer should reply and state that the reasons were stated in the ruling. What is so hard with doing that?
15. For the reason that the Taxing Officer ignored that request or failed to respond to it, I will spare the Reference. Where there is a request, it is only reasonable that the request be responded to. And as that response is awaited, time should not run.



16. For the foregoing, and in the interest of substantive justice, the Respondent's Preliminary Objection is hereby dismissed, with a further order that the Reference be determined on its merits.

DATED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF NOVEMBER 2024.

PROF (DR) NIXON SIFUNA

JUDGE

