



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**MISC. CIVIL APPLICATION NO. 11 OF 2019**

**COUNTY GOVERNMENT OF GARISSA.....APPLICANT/RESPONDENT**

**VERSUS**

**REPUBLIC.....RESPONDENT/APPLICANT**

**EXPARTE: PAUL MWANGI & COMPANY ADVOCATES**

**RULING**

1. By application dated 2/3/2020, the applicant seeks stay of proceedings, hearing and determination of the instant application and ruling scheduled on 10/3/2020 which prayer is now spent as ruling was delivered.
2. The remaining substantive prayer is for setting aside of certificates of taxation by Taxing Master and grant of leave for applicant to file its responses to the various bills of costs tied to this application.
3. The ground advanced for the application are that, *“applicant discovered that documents with regard to this matter had been filed and served directly to the applicant and may have been received by staff members who no knowledge or conduct of these matter.....”* interalia.
4. The application is supported by the affidavit of Ismail Aden Dabar sworn on 2/3/2020 which reiterates the content of the grounds on the motion.
5. The application is opposed by the respondent via affidavit of Makaba Winfred which is sworn on 6/3/2020.
6. The content of the affidavit is essentially that service was effected to the applicant as there was no advocate on record.
7. The ruling on bills No. Misc. 1 of 2017, 2 of 2017 and 3 of 2017 were made on 14/3/2018 and no reference to date has been done to challenge the awards thereof for over 2 years.
8. The applicant has participated in Judicial Review fully. The Judicial Review was instituted on October 2019 and no challenge to decrees arising to the awards was lodged.
9. This court gave ruling on Judicial Review on 28/1/2020 thus the delay is inordinate. The matter came for highlighting of the submissions on 12/5/2020 and the parties relied on the submissions.

**ISSUES ANALYSIS AND DETERMINATION**

10. After going through the parties' pleadings/affidavits, recorded proceedings and parties' submissions I find the issues are; **whether the application is properly before this court, misplaced and untenable? If above is in negative, whether the application has merit? What is the order as to costs?**
11. Under the provisions of **rule 11 of the Advocates Remuneration Order** provides a detailed process of objection as follows:

***“That should any party object to the decision of the Taxing Officer; he may within fourteen days after the decision give a notice in writing to the Taxing Officer of the items of taxation to which he objects.***

***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 parties concerned, setting out the grounds of objections.”*

12. Justice Mary Kasango in Alfred Ochieng Opiyo t/a Ochieng Opiyo & Co. Advocates vs Expo Hydro Pump Ltd referred mentioned the case of Vishit Talwar vs Anthony Thuo Kanai t/a A. Thuo Kanai Advocates [2014] eKLR where the Honourable Justice R. E. Aburili had referred to the Court of Appeal decision in Machira & Co. Advocates vs K. Magugu & Another CA No. 199/2002 [2012] eKLR where it was states as follows:

*“Rule 11 thereof provides for ventilation of grievances from such decisions through reference to a judge in chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not loosely used. Appeals require the typing of proceedings, compiling of records of appeal and hearing of the same in open court. Reviews, however would require provisions akin to those in section 80 of the Civil Procedure Act of discovery of new and important matters, errors.....in our view the Rules Committee intended to avoid all that and provide for a simple and expeditious mode of dealing with decisions on advocate’s bill of costs through reference under rule 11 to a judge in chambers.”*

13. Justice R. E. Aburili found fault with a reference of taxed costs that was filed as an appeal rather than a reference and proceeded to state that,

**“I have no doubt in my mind that the above cited decisions set out good law regarding the procedure to be adopted in challenging taxed bill of costs whether it is between party and party or advocate and client.”**

14. It is apparent that the current application is not properly before this court as the procedures set out in the above-mentioned rules have not been adhered to.

15. The court has also noted that the HCCMisc. Applications 1 /017 was taxed in that file and certificate issued thereof, so is 2/017 was in Garissa ELC taxed and certificate issued thereof and 3/017 was taxed in that file and certificate issued thereof. Thus, the challenge of taxation should have been filed with the respective miscellaneous cases which issued the impugned certificates of taxation and not in this Judicial Review cause.

16. Thus, this court has no jurisdiction to entertain the subject application as its role is only limited to execution of the decree.

17. Further, there are no certificate of costs to be set aside as prayed in the application. The subject certificates of costs have already been made judgments and decrees issued to that effect on 22nd August, 2018 in Garissa CMCC No. 16 of 2018 and therefore the application is flawed, incompetent and untenable and thus court makes the following orders:-

**i) The instant application be and is hereby struck out and parties to bear their costs.**

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 19<sup>TH</sup> DAY OF MAY, 2020.**

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**C. KARIUKI**

**JUDGE**