



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISCELLANEOUS NO 46 OF 2019**

**SYMON THUO GACHAHI t/a**

**STG MUHIA & ASSOCIATES ADVOCATES ..... APPLICANT**

**=VERSUS=**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. Mr Symon Thuo Gachahi t/a STG Muhia & Associates Advocates (**the applicant**) initiated this suit as a fresh miscellaneous application on 11/5/2019. The suit was brought by way of chamber summons dated 13/3/2019. The applicant invited the court to exercise jurisdiction under Rule 11(1) and (4) of the Advocates (Remuneration) Order and Sections 3 and 3A of the Civil Procedure Act. He urged the Court to grant the following verbatim orders:

- 1) *That leave be granted to the applicant to file reference from taxation of the Taxing Officer delivered on 8/1/2019 as far as the same relate to the objected items of the applicant's advocate/client bill of costs dated 6/7/2018, out of time.*
- 2) *That the reference filed herewith be deemed to be duly and properly filed though filed out of time.*
- 3) *That costs of this application be provided for.*

2. The application was supported by an affidavit sworn on 13/3/2019 by Mr Kariuki Mwangi. It was canvassed through written submissions dated 19/11/2019. Relying on the decision in **Thomas K'bahati t/a K'bahati & Co Advocates v Janendra Raichard Shah [2018] eKLR**, the applicant contended that this court had wide and unfettered discretion, and urged the court to grant the orders.

3. The respondent opposed the application through a replying affidavit sworn on 3/4/2019 by Mr Justus Ododa. Further, the respondent filed written submissions dated 20/12/2019. Relying on the decision of **Justice Ochieng in A M Kimani & Company v Trident Insurance Company**, the respondent urged the court to dismiss the application.

4. I have considered the entire record before me. I have also considered the legal framework governing the jurisdiction of this court under Rule 11 of the Advocates (Remuneration) Order. What is before me for determination is a fresh suit brought by the applicant. The court is invited to exercise its jurisdiction under Rule 11 of the Advocates (Remuneration) Order on the platform of this fresh suit. Rule 11 of the Advocates (Remuneration) Order provides 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 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.*

5. My understanding of the jurisdiction of this Court under rule 11 of the Advocates (Remuneration) Order is that the court exercises its jurisdiction on the platform of the suit in which the impugned decision of the taxing officer was made. It is not exercised in a separate or fresh suit. Exercise of that jurisdiction is invoked through the filing and service of an objection under rule 11 (1). The notice of objection sets out the contested items and findings, where necessary. Upon filing of the notice of objection within the suit, and upon service of the notice, the objector is required to file a reference to the judge by way of chamber summons within the same suit. The judge thereafter exercises jurisdiction under rule 11 on the platform of the suit in which the impugned decision of the taxing officer was made.

6. The miscellaneous application before me is a fresh suit. An application under rule 11(4) ought to be brought in the suit in which the impugned decision was made. I do not think I would be properly directing my mind if I were to purport to exercise jurisdiction under rule 11(4) on the platform of this fresh suit yet the impugned decision of the taxing officer was made in a different suit, to wit, **Nairobi ELC Misc Application No 106 of 2018**.

7. Consequently, the suit herein is struck out without venturing into its merits, on the ground that the court lacks jurisdiction to entertain the present application on the platform of a fresh suit such as the present suit. The applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF MAY 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Ms Serah Obwagi for the respondent

Mr Kariuki for the applicant

June Nafula - Court Clerk