



**Nyamu v Kwale International Sugar Company Limited (Cause
825 of 2015) [2024] KEELRC 13643 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13643 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 825 OF 2015**

**AK NZEI, J
MAY 16, 2024**

BETWEEN

MWARI BUNDI NYAMU CLAIMANT

AND

KWALE INTERNATIONAL SUGAR COMPANY LIMITED RESPONDENT

RULING

1. The application before me is the Respondent’s Chamber Summons dated 7th December 2023 and expressed to be brought under Sections A1, 3B and 3A of the *Civil Procedure Act*, Rule 11 of the Advocates Remuneration Order, and Order 21 Rule 9A of the Civil Procedure Rules, and seeks orders:
 - a. that the decision of the taxing master delivered on 24th November 2023 be set aside, and the Bill of Costs dated 10th January 2022 be struck out.
 - b. that costs of the application be provided for.
2. The application is based on a supporting affidavit of Amos Suge, a Legal Officer in the Respondent company, and is opposed by the Respondent vide grounds of opposition dated 17th January 2024.
3. The Court’s record shows that on 9th March 2023, the Claimant filed a Party and Party Bill of Costs dated 10th January 2022, which this Court’s Deputy Registrar, sitting as a Taxing Officer, taxed at Kshs. 196,985 vide a Ruling delivered on 24th November 2023. The Respondent/Applicant has come to this Court seeking the setting aside of the said taxing officer’s decision. Rule 11 (1) & (2) of the Advocates Remuneration Order, 1962 provides 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 parties concerned, setting out the grounds of his objection.”
4. I have perused the entire Court record herein, and I have noted that the Respondent/Applicant did not file any objection to the taxing officer’s decision, and that no reference was filed pursuant to the foregoing provisions of the law. What is before me is an ordinary Chamber Summons, but not a reference. This Court’s jurisdiction to intervene in matters taxation of costs has not been invoked in accordance with the law.
5. It was stated as follows in the case of *MACHIRA & CO. ADVOCATES VS. MAGUGU* [2002] 2 E.A. 428 (Ringera, J):-
- “As I understand the practice relating to taxation of bill of costs, any complaint about any decision of the taxing officer, whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs, is ventilated by way of a reference to a Judge in accordance with paragraph 11 of the Advocates Remuneration Order.”
6. In the case of *GACAU KARIUKI & CO. ADVOCATES VS. ALLAN MBUGUA NG’ANG’A* [2012] eKLR (Odunga, J) the Court stated as follows:
- “I must make it very clear that what is before me is not a reference from a taxation, but an application seeking to set aside the orders made on 29th day of September 2011 and 27th October 2011. The orders which were made on 29th September 2011 were made by the Deputy Registrar when in her capacity as the Taxing Master taxed the Bill as presented. What is the procedure for challenging such a decision. In my view, the only available recourse to a person aggrieved by a decision of a Taxing Officer is to lodge a reference. Where a person discovers the fact of taxation after the time stipulated as it is alleged herein, paragraph 11(4) of the Advocates Remuneration Order empowers the Court to extend time. It has been said time and again that where there is a specific procedure provided for addressing a grievance, that procedure should be strictly complied with.”
7. For record purposes, it is to be noted that under paragraph 11 of the Advocates Remuneration Order, a person aggrieved by a taxing officers’ decision objects to the decision within fourteen days of the decision and calls upon the Taxing Officer to give his reasons for the decision on the objected item and/ or items in the bill of costs. A reference to this Court is filed if the Party objecting is dissatisfied with the reasons given by the Taxing Officer. In my view, a reference can be filed if the Taxing Officer fails to respond within the time stated in the objection. A reference is, therefore, not an ordinary application, and can only be filed in accordance with the procedure set out in paragraph 11 of the Advocates Remuneration Order.
8. Having said that, and having considered written submissions filed on behalf of both parties herein, it is my finding that the Chamber Summons dated 7th December 2023 is frivolous and is an abuse of this Court’s process, and the same is hereby dismissed with costs.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16TH MAY 2024



AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Claimant

.....Respondent

