



Kanai t/a A Thuo Kanai Advocates v Golf Fairways Limited & another (Environment & Land Miscellaneous Case 183 of 2018) [2024] KEELC 934 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELC 934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 183 OF 2018
EK WABWOTO, J
FEBRUARY 22, 2024**

BETWEEN

ANTHONY THUO KANAI T/A A THUO KANAI ADVOCATES ... APPLICANT

AND

GOLF FAIRWAYS LIMITED 1ST RESPONDENT

INDER JIT TALWAR 2ND RESPONDENT

RULING

1. The Applicant filed a Notice of Preliminary Objection dated 26th October 2023 which was raised against Respondents application dated 22nd August 2023 seeking its dismissal with costs on the following grounds:
 - i. The Respondents/Clients' Application is time barred and fatally defective for failing to comply with Rule 11(1) of the *Advocates Remuneration Order* and in particular the notice of objection and application were filed after the lapse of the statutory time lines in breach of the law.
 - ii. The Respondents/Clients' Application is Res judicata and an abuse of the court process since Justice Wabwoto in his ruling dated 2nd February 2023 has already determined that retainer relationship existed between the Applicant/Advocate and the Respondents/Clients when he allowed the Applicant/Advocate's reference application dated 31st May 2022 on the same issue
 - iii. The Respondents/Clients obsession with the issue of the retainer relationship that was determined by Justice Wabwoto in his ruling dated 2nd February 2023 and attempts to re-litigate the same issue herein and before the Taxing Officer is an abuse of the court process.
2. On 15th November 2023, the Court directed that the Preliminary Objection be canvassed by way of written submissions.



3. In the Respondent's replying affidavit dated 10th October 2023, it was submitted that the alleged delays were due to the inadvertent mistakes of the Court which should not be visited upon the Client.
4. The Applicant filed submissions dated 27th December 2023 in which it was submitted that the Respondents were in breach of Rule 11(1) of the *Advocates Remuneration Order* as evidenced by the filing fees receipt dated 10th August 2023 whereas the deadline would have been 7th August 2023. Relying on the case of *Twiga Motors Limited v Dalmas Otieno Onyango* [2010] eKLR it was argued that failure to adhere to timelines would render the application incompetent. It was also argued that no justification was offered to reasonably support the late filing and therefore all allegations were not truthful but an attempt to misdirecting the Court.
5. With regards to the issue of res judicata, it was argued that the issue of retainer had been judiciously covered by the Court and determined in favour of the Applicant and therefore could not be raised and re-litigated. It was also argued that the Respondents should be estopped from raising new issues not considered or determined by the Taxing officer.
6. It is clear that the issue for determination before this court is whether the preliminary objection dated 26th October 2023 is merited?
7. The procedure by an aggrieved party to challenge a taxation ruling is set out in the Paragraph 11 of the *Advocates Remuneration Order* and is very specific on what an aggrieved party ought to do. A party who intends to challenge a ruling on taxation must first write to the taxing officer within 14 days from the date of ruling of taxation, giving a notice of objection specifying the items in the bill of costs in respect of which he is aggrieved of and requesting the taxing master/officer to give reasons for allowing them as shown in the ruling.
8. Paragraph 11(1) and (2) of the *Advocates Remuneration Order* stipulates-

“ ...

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 - (1) should any party object to the decision of the taxing officer, he may within 14 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 14 days from the receipt of the reasons apply to the judge in chambers which shall be served on all parties concerned, setting out the grounds of his objection...”
9. The contents of the Notice of Objection dated 7th August 2023 confirm that the Respondents were aggrieved by the whole decision to which they objected and sought reasons for the decision. With regards to the time restriction of 14 days, I do agree that the Respondents had until 7th August 2023 to file their notice of objection. I have considered that although the letter and Notice of objection are dated 7th August 2023, the Respondents ought to have produced evidence of when the same was filed.
10. It is apparent from the law that in addition to option of filing a notice of objection, the filing of a reference within 14 days from the date of receiving the reasons for the decision is also an option available to the parties. In this instance, the reference was filed vide a Chamber Summons dated 22nd August 2023 which was the same day the reasons for the taxation were received. Ultimately, it is undisputed that the Respondents filed the reference in good time.



11. In the foregoing, this Court hereby finds that the Notice of preliminary objection dated 26th October 2023 is unmerited and the court shall proceed to make the following orders:
- a. The preliminary objection is dismissed.
 - b. No orders as to costs.
 - c. These orders shall apply to ELC Misc No. 184 of 2018

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF FEBRUARY 2024.

E. K. WABWOTO

JUDGE

