



Livoi v Momanyi t/a Nchogu, Omwanza & Nyasimi Advocates (Miscellaneous Application E131 of 2023) [2024] KEELRC 13272 (KLR) (28 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13272 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E131 OF 2023**

**BOM MANANI, J
NOVEMBER 28, 2024**

BETWEEN

CLOFORD OTWERE LIVOI APPLICANT

AND

**JOB NYASIMI MOMANYI T/A NCHOGU, OMWANZA & NYASIMI
ADVOCATES RESPONDENT**

RULING

1. The instant application is filed pursuant to the provisions of rule 11 of the [*Advocates Remuneration Order*](#). The Applicant seeks to set aside the order of this court's Taxing Master dated 19th April 2024 by which the Advocate's Bill of Costs dated 12th June 2023 was taxed at Kshs 132,265.00.
2. The Applicant has raised a number of reasons why he seeks the order. These include, inter alia, that: the amount awarded by the Taxing Master is excessive; no instruction fee was ascertained by the trial court in its order dismissing the parent suit; the claim in the parent suit was not for a liquidated amount; and no Bill of Costs can arise from a negative decree.
3. The application is opposed on a number of grounds. First, the Advocate contends that the objection was filed outside time. Second, he contends that the application does not in any event constitute a reference. Third, he avers that the application is an abuse of the court process, a similar application having been dealt with earlier on.
4. Rule 11 (1) & (2) of the [*Advocates Remuneration Order*](#) provides as follows:-
 - a. 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.



- b. 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.
5. In effect, a party who wishes to object to a decision of a Taxing Master ought to write to the Taxing Master within fourteen days of the decision requesting for the reasons for the decision. Once the Taxing Master responds to the request, the party should lodge his objection to the taxation within fourteen days of receipt of the response from the Taxing Master.
 6. As such, time for lodging an objection to a taxation order is regulated by statute. It must be within fourteen days of receipt of the reasons for the decision from the Taxing Master.
 7. Notwithstanding the foresaid, case law suggests that where the reasons for the decision are apparent on the face of the ruling, the objection to the taxation must be lodged within fourteen days of the decision (see *Governors Balloon Safaris Limited v Skyship Company Limited & another* [2015] eKLR). As such, time for filing the objection in this respect starts to run from the date of the decision.
 8. The record shows that the ruling which is the subject of this objection was delivered in the presence of the Applicant on 19th April 2024. A typed copy of the decision is on the court file.
 9. The application which anchors the instant objection was filed on 11th May 2024. This was more than twenty (20) days after the impugned ruling by the Taxing Master was rendered.
 10. There is nothing on the court file to suggest that the Applicant wrote to the Taxing Master to request for the reasons for the decision. In any event, a perusal of the decision demonstrates that the reasons for the ruling are contained in it.
 11. Therefore, time for filing the instant reference began to run from 19th April 2024. The fourteen days within which the objection ought to have been filed ran out on 3rd May 2024.
 12. There is nothing on the court file to suggest that the Applicant sought the court's leave to file the reference out of time. At the same time, the Applicant has not prayed for the application to be deemed to have been presented within time. As such, the objection was filed out of time.
 13. However, even assuming that the objection was validly presented, it is doubtful that it would have succeeded on the merits. As the Advocate has rightly pointed out, the purpose of a reference is to seek for re-taxation of the Bill of Costs; not to dismiss it. As such and to the extent that the Applicant's application seeks for orders dismissing the impugned Bill of Costs, the same would still have been fatally defective and incompetent in any event (see *Equity Bank Limited v Capital Construction Limited & 3 others* [2015] eKLR).

Determination

14. For the foregoing reasons, the instant reference/objection is declared incompetent.
15. As such, it is dismissed.
16. Costs are granted to the Advocate.

DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF NOVEMBER, 2024

B. O. M. MANANI

JUDGE



In the presence of:

..... for the Applicant

.....for the Advocate

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

B. O. M MANANI

