



REPUBLIC OF KENYA



KENYA LAW
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**Wells Fargo Limited v Karanja & 12 others (Appeal E011 of 2022)
[2023] KEELRC 2493 (KLR) (3 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2493 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E011 OF 2022
NZIOKI WA MAKAU, J
OCTOBER 3, 2023**

BETWEEN

WELLS FARGO LIMITED APPELLANT

AND

SYMON MIGWI KARANJA 1ST RESPONDENT
STANLEY MUTUA MBIRITHI 2ND RESPONDENT
WILLIAM MUGO MAINA 3RD RESPONDENT
BONFACE KABUCHO KAMAU 4TH RESPONDENT
PAUL LIVINGSTONE NGABA 5TH RESPONDENT
BENARD ROTICH KIPSANG 6TH RESPONDENT
JOHN GITUKU MUCHIRI 7TH RESPONDENT
SOLOMON KIMUTAI CHELANGA 8TH RESPONDENT
RICHARD ORAMISI KICHWANGA 9TH RESPONDENT
ALBERT SUNGU AMTALA 10TH RESPONDENT
PAUL MACHARIA KIRUGUMI 11TH RESPONDENT
KENNEDY KIVITI 12TH RESPONDENT
PETER THUO MBURU 13TH RESPONDENT



JUDGMENT

1. The Appellant's Memorandum of Appeal dated 31st January 2022 seeks to vary or set aside the Ruling of the Deputy Registrar delivered on 25th January 2022 in her capacity as a taxing officer under the [Advocates Remuneration Order](#).
2. The Appellant submits that the submissions filed relate to the Appellant's Memorandum of Appeal filed herein challenging the decision of the learned Deputy Registrar Noelle Kyany'a dated 25th January 2022 in which she declined to grant the Appellant's Application seeking to have the Respondents file a consolidated Bill of Costs. The Appellant submits that there are only two issues for determination in this matter which can be summarised as follows:
 - a. Whether the present Appeal has properly been filed; and
 - b. Whether the Appeal is substantively merited.
3. The Appellant submits that the Respondents have challenged the propriety of the present Appeal on the basis that no appeal can validly lie to this Honourable Court from a decision of the Deputy Registrar of the Court. In response to this challenge, the Appellant submits that the present Appeal has been brought pursuant to the provisions of Order 49 Rule 7(2) and (3) of the [Civil Procedure Rules](#). Order 49 Rule 7(2) of the Rules provides as follows:-

An appeal from a decision of the registrar under the Orders referred to in subrule (1) shall be made to a judge in chambers.

Order 49 Rule 7 (3) goes on to provide as follows:

The memorandum of the Appeal, setting out the grounds of the appeal shall be filed within seven days of the decision of the Registrar.

4. The Appellant submits that the provisions of the foregoing rule, and its application, have been analysed in various decisions. The Appellant submits that in the case of [Francis Muriuki Muraguri t/a Lusoi Stores & 2 others v Milling Corporation of Kenya](#) [2009] Limited [2018] eKLR held as follows regarding the application of the said Rule:

- “ 13. On the matter of leave to file the appeal against the Deputy Registrar's ruling, Order 49 Rule 7(2) [Civil Procedure Rule](#) states: "An appeal from a decision of the Registrar under orders referred to in Sub-rule(1) shall be to a Judge in chambers"

This appeal was filed six days after the Deputy Registrar's ruling, thus within the time stated in rule 7(3) above.

14. Section 75(1) (h) of the [Civil Procedure Act](#) lists orders from which appeals lie as of right, without leave of court.

The powers of a Deputy Registrar are stated under Order 49 of [Civil Procedure Rules](#). The Deputy Registrar is the taxing master of the High Court. Under this order, no leave is necessary, save for orders under Order 22 rule 28 and 75.



Rule 7 states the applications that the Deputy Registrar may hear. Among them is execution proceedings under Order 22 - that deals with modes of execution.

15. Taxation of Bills of costs is part of execution proceedings without which a decree for execution may not be drawn.

Rule 7(2) of order 49 of [Civil Procedure Rules](#) states:

"that an appeal from a decision of the registrar under orders referred to in Sub-rule (1) shall be to a Judge in chambers."

It does not state leave is necessary or is required by a party to file an appeal falling under Rule 7 of Order 49 of [Civil Procedure Rules](#).

16. Having so rendered, I find that the Deputy Registrar's ruling dated the 9th July 2013 staying taxation of the appellant's bill of costs in HCCA No.49 of 2012 to have been a misdirection and misapprehension of the law. HCCA No.58 of 2013 once heard and finalised, the issue of costs will follow the event, and taxation of costs of the party who wins will ensue as it is a separate and independent appeal from the struck out appeal No. HCCA No. 47 of 2012.
 17. I find that the appeal is merited and proceed to set aside the ruling of the Deputy Registrar dated the 9th July 2013 and direct that the appellant's Bill of costs dated 25th February 2013 in HCCA No.47 of 2012 be placed before the Deputy Registrar of this court for taxation upon notice to the respondents hereof. (emphasis supplied by the Appellant)
5. The Appellant submits that the Ruling by a Deputy registrar, touching on Bills of Costs, constitutes a question touching on execution and such ruling is therefore open to challenge by way of Appeal to a Judge. The Appellant submits that the foregoing authority is on all fours with the facts in this case for the following reasons:
 - a. The impugned ruling the subject of Appeal herein is in relation to a decision of the Deputy Registrar on a question whether the Respondents should file a Consolidated Bill of Costs or whether they should file separate bills as they did;
 - b. As the issue touches on mode of taxation of bills of costs, a ruling of the Deputy registrar on the issue is subject to challenge to a judge by way of appeal as has been done in this case;
 - c. The Memorandum of Appeal in this case was filed within the requisite 7 days as required by Rule 7(3).
 6. The Appellant submits that a similar holding was made by the Court in the case of [Kiplagat Kotut v Rose Jebor Kipngok; Standard Chartered Bank & another \(Garnisbees\)](#) [2020] eKLR
 7. The Respondents submit that the issue for determination is whether the appeal is properly before court. They submit that under paragraph 11 of the [Advocates Remuneration Order](#), a party aggrieved by the decision of a taxing master need to file a reference by way of chamber summons seeking to set aside, vary the orders of the taxing officer's orders. The said provisions state 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 the parties concerned, setting out the grounds of his objection.
 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal. 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.
8. The Respondents cite the case of *Kamau Kinga & Company Advocates v Grace Wanjiku Kabiaru* [2017] eKLR where the court observed that: -
- “An appeal flows from the reference and not directly from the decision of the taxing master. In any event that appeal lies at the Court of Appeal with leave of court. It was not demonstrated that that was not done. There is therefore no proof that the procedure prescribed in the provisions of the Advocates Remuneration Order was complied with.”
9. Further, in the case of *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited* [2017] eKLR, it was held that:
- ‘...thus compliances with the requirements of paragraph 11 of the Remuneration Order is not a mere technicality that can be pushed aside peremptorily as the Applicant appears to suggest. The provisions of Article 159(2)(d) of the Constitution were not intended to overthrow procedural or technical requirements, but to guard against “undue regard to procedural technicalities in the administration of justice.”
10. The Respondents submit that guided by the dictum in above cited cases, the Appellant ought to have come to court through the provisions of the Advocates Remuneration Order. It is trite law that the decision of the Taxing Master can only be ventilated through a reference to a judge through a chamber summons application and not through a memorandum of appeal. They submit that this court’s jurisdiction can only stem from Paragraph 11 of the Advocates Remuneration Order. The Respondents cite the decision in the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others* [2013] eKLR where Kiage JA stated: -
- “... I am not in the least persuaded that Article 159 of the Constitution and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be



anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned..."

11. The Respondents further submit that the appellate jurisdiction of any court is a creature of statute and has to be exercised in accordance with the provisions of the statute creating it. In the case of [Lubullelah & Associates Advocates v N. K Brothers](#) [2015] eKLR follows:-

“For the reason that the procedure of advocates costs is well captured in the [Advocates Act](#) and the [Advocates Remuneration Order](#) which is a complete code in itself and the [Civil Procedure Rules](#) would not be applicable unless as had been provided therein and for purposes of enforcement of judgment...”

12. The Respondents submit that the above holding was upheld by the Court of Appeal in [Machira & Co. Advocates v Arthur K. Magugu & another](#) [2012] eKLR where it held that:

“Rule 11 thereof provides for ventilation of grievances from such decisions through references 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 be 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 on the face of the record and so on. 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 bills of costs through references under Rule 11 to a Judge in chambers”.

13. From the foregoing, it is submitted that the law is clear that the [Advocates Remuneration order](#) does not provide for appeals from the Taxing master's decision. It is therefore the Respondents' submission that the present appeal is untenable and is not what is contemplated by the [Advocates Remuneration Order](#). The same is a non-starter and should be struck out with costs.

14. The Respondents have a point. As Kiage JA held in the case of [Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others](#)

“... I am not in the least persuaded that Article 159 of the [Constitution](#) and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned...”

15. I could not have said it better. Article 159 of the [Constitution](#) did not wipe away procedure. Instead it provides that there shall not be undue regard for technicalities. Rules of procedure are not



technicalities. They are the handmaidens of justice to quote the very wise words Ringera J. (as he then was) in the case of *Microsoft Corporation v Mitsumi Computer Garage Ltd & another* [2001] KLR 470. As correctly pointed out, rules are to facilitate the administration of justice in a fair orderly and predictable manner. Where a party is aggrieved by a taxing master's decision, as was the case before the Deputy Registrar Hon. Noelle Kyany'a, the appropriate course was to file a reference before a Judge. The reference is what is deemed an appeal and not a memorandum of appeal as was drawn here. The Appellant misapprehended the law and made a mess of it. As such the Respondents have correctly interpreted the matter, meaning the appeal is a non-starter and is accordingly dismissed with costs to the Respondents.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2023

NZIOKI WA MAKAU

JUDGE

