



Karweru & Company Advocates v Jiangxi Transportation Engineering Group Ltd & 2 others (Miscellaneous Application E011 of 2022) [2023] KEELRC 3337 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3337 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
MISCELLANEOUS APPLICATION E011 OF 2022
ON MAKAU, J
DECEMBER 20, 2023**

BETWEEN

KARWERU & COMPANY ADVOCATES APPLICANT

AND

JIANGXI TRANSPORTION ENGINEERING GROUP LTD ... 1ST RESPONDENT

THE THIRD ENGINEERING BUREAU OF CHINA CITY CONTRUCTION GROUP 2ND RESPONDENT

VICTORIA ENGINNERING CO.LTD 3RD RESPONDENT

RULING

1. This ruling relates to the Notice of Preliminary Objection by Karweru & Co. Advocates dated 24th October, 2023 which stands on the ground that this court lacks jurisdiction to hear and determine the respondents Notice of Motion dated 11th October, 2023.
2. The facts giving rise to the dispute herein are that Karweru & Co. Advocates filed an Advocate -Client Bill of costs against the respondents on 30th September 2022. The bill was taxed and a ruling was delivered on 16th August, 2023 awarding Kshs.298,657.00 and the Advocates commenced execution on 4th October, 2023.
3. In response, the respondent filed the Notice of Motion dated 11th October, 2023 seeking the following orders:-
 - a. THAT the Application be certified urgent and service thereof be dispensed with in the first instance.



- b. THAT leave be granted for the law firm of Omusolo Mungai and Company Advocates to come on record for the Respondents and the Notice of Appointment herein be admitted on record.
 - c. THAT pending the inter-parties hearing and determination of this application, this honourable court issue interim orders of injunction restraining the Applicant, whether by themselves, their agents, employees, servants or any person acting at their behest from seizing, attaching, alienating, disposing, selling, assigning, or in any other like manner dealing with any of the Respondent's property on account of the decree in favour of the Applicant.
 - d. THAT this Honourable court does grant a stay of execution of the decree passed on 24th May, 2023 and all consequential orders therefrom pending the hearing and determination of this application inter-parties.
 - e. THAT the ex-parte orders entered against the Respondents in the main application and the proceedings thereto be set aside and the application be set down for hearing on its merits.
 - f. THAT the Auctioneer's fee in any event to be paid by the Applicant.
 - g. THAT the costs of this application and the entire suit be borne by the Applicant.
 - h. The costs of the Application be provided for.
4. The court granted the interim order of stay on condition that the taxed costs be deposited in court.

Submissions

- 5. Mr.Karweru argued the objection on 3rd November 2023. He submitted that the Application offends Rule 11 of the *Advocates Remuneration Order* (ARO). He contended that the application is brought under Order 22 Rule 22 and the oxygen Rule of the *Civil Procedure Act* to set aside a decision by the Taxing officer as opposed to a reference under Rule 11 of the *Advocates Remuneration Order*.
- 6. The counsel submitted that the court lacks jurisdiction to set aside the certificate of costs as sought and contended that the taxing officer was the proper forum to hear the motion. He urged the court to strike out the motion and set aside the interim stay order. Reliance was placed on the case of *Wilfred Konosi v Flamco Ltd* (2017) eKLR.
- 7. Ms.Githongo opposed the objection but admitted that the application is not a reference from a decision by the Taxing Officer. She submitted that the issue of Advocate-Client relationship was determined without hearing the respondents. She further submitted that the court has jurisdiction to find that there was no service before the taxation was done.
- 8. She contended that section 51(2) of the *Advocates Act* provides that a certificate of costs by the taxing officer is final award and the officer becomes functus officio. She maintained that only a judge can entertain application on certified costs. She prayed for the objection to be discussed and the application heard on merits.
- 9. In this rejoinder, Mr.Karweru submitted that the application has not quoted Rule 11 of the Advocates Remuneration Order and it is therefore beyond the court's jurisdiction since it is not a reference. He contended that a reference can only be made against an order in taxation.



10. He further submitted that, even if the application was to be treated as a reference against the taxed costs, the same would be statute barred since decision was made on 16th August 2023 and a certificate signed on 6th September 2023. He clarified that section 51 (2) of the *Advocates Act* only deals with finality of certificate of costs and not jurisdiction over applications consequent to the taxation.

Issues for determination

11. The main issue for determination are:-
- a. Whether the court has the jurisdiction to determine the motion by the respondent.
 - b. Whether the motion is merited.

Jurisdiction

12. Mr.Karweru contended that the court has no jurisdiction to determine a challenge on the decision by the taxing officer of the court except by way of reference under Rule 11 of the Advocates Remuneration Order. However, Ms.Githongo was of a different view.
13. Section 51 of the *Advocates Act* contemplates setting aside or variation of an order of the taxing officer in the following terms: -
- “(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in the case where the retainer is not disputed, an order that judgment be entered for the sum certified to be done with costs.”
14. The procedure for challenging a certificate of costs by the taxing officer is set out by Rule 11 of the *Advocates Remuneration Order*, thus:-
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 them 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 the 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 court appeal to the Court of Appeal.”
15. My interpretation of the above provision is that there is only one door open to any party wishing to challenge a decision of the taxing officer with respect to taxation of costs. The door is a reference to a Judge by a chamber summons. The aggrieved party is supposed to serve the taxing officer with a notice of objection within 14 days of the decision seeking reasons for the decision on the items objected to. If the decision was not contained in a written formal ruling, the taxing officer is obliged to give the



reasons for his decision in writing on the items concerned. Thereafter the objector has fourteen days upon receipt of the reasons from the taxing officer to file a reference.

16. In view of the foregoing, I find that the impugned motion does not fall within the four corners of Rule 11 of the Advocates Remuneration Order. Ms. Githongo admitted that the motion is not a reference under Rule 11 of the Advocates Remuneration Order. Accordingly, I must hold, that the motion dated 11th October, 2023 is alien to the province of law on taxation of costs and must fall on its face. As such the preliminary objection is upheld and the entire motion dated 11th October, 2023 struck out with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER, 2023.

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judge

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

