



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**MISCELLANEOUS CIVIL APPLICATION NO. 22 OF 2019**

**IN THE MATTER OF THE ADVOCATES ACT CHAPTER 16 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ADVOCATE – CLIENT BILL OF COSTS ARISING FROM**

**LEGAL SERVICES IN KISUMU ELRC**

**JUDICIAL REVIEW APPLICATION NO. 1 OF 2018**

**SIGANGA & COMPANY ADVOCATES.....ADVOCATE/RESPONDENT**

**VERSUS**

**HOMABAY COUNTY ASSEMBLY SERVICE BOARD.....CLAIMANT/APPLICANT**

**RULING**

1. Application dated 7/5/2019, prayers for an Order in the following terms: -

(i) Spent.

(ii) That there be stay of execution of the exparte Orders obtained on 31/7/2019 against the applicant pending the hearing and determination of the application interpartes.

(iii) That the exparte orders obtained on 31/7/2019 against the Defendants and all consequential Orders be set aside upon such terms as are just.

3. The application was heard exparte by Hon. Lina Akoth, magistrate and was referred for interpartes hearing before the Deputy Registrar Employment and Labour Relations Court on 3/9/2019.

4. The application was then referred to this Court on 19/9/2019 by the Deputy Registrar for directions and the Court gave directions on filing of submissions.

5. The Court gave further directions on the filing of submission on 19/12/2019.

6. The file was placed before the Deputy Registrar for directions on 6/10/2020 and she directed that Ruling be delivered on notice and the Ruling delivered to apply to file numbers, 21, 23 and 24 of 2019 involving the same subject matter.

7. The application is premised on grounds set out on the Notice of Motion the nub of which is that the applicant did not attend the taxation of the suit on 31/7/2019 due to an oversight in diarizing the date and not through a deliberate omission.

8. The Applicant has to his prejudice not been heard orally by way of written submissions thus denying them right to a fair hearing.

9. The respondent filed a replying affidavit dated 24/8/2019 and grounds of opposition dated 28/8/2019.

10. The respondent states that the taxation was diligently done by the taxing master on 3/7/2019. That no objection to the taxation was timeously filed in terms of the relevant provisions of the Advocates Act and Advocates Remuneration Order.

11. That the application is incurably defective and it be dismissed with costs.

12. The parties filed their respective submissions in respect of file No. 21, 22, 23 and 24 of 2019 in respect of which taxation was done by the Deputy Registrar on 31/7/2019.

13. The issue for determination is whether the application before Court is suited for impugning a decision of a taxing master which a party is not satisfied with.

14. In this respect, Rule 11 of the Advocates' (Remuneration) Order provides: -

**“(11) Objection to decision on taxation and appeal to Court of Appeal.**

(i) 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.

(ii) The taxing officer shall forthwith record and forward to the objector 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. The notice of motion brought under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 10, Rule 10 and 11 of the Civil Procedure Rules is not only not suited to address an objection to a decision of the taxing master but it is also fatally defective because the applicant did not object to the Taxing master within 14 days requesting for the reasons of the taxation.

6. In fact no objection at all was made to the decision of the taxing master and so there are not reasons before this Court given by the Taxing master for consideration by this Court.

7. The application is fatally defective and also lacks merit completely because it does not challenge the contents of the decision of the taxing master.

8. Accordingly, the application is dismissed with costs. The ruling apply to Applications 21, 22, 23 and 24 of 2019.

**Dated and delivered at Nairobi this 11<sup>th</sup> day of March, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances:**

M/s Opar for the Applicants

Mr. Siganga for Respondents

Chrispo: Court clerk.