



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAIROBI

CAUSE NO.2054 OF 2016

WILLIAM KAZUNGU SIMBAH.....CLAIMANT

VERSUS

KENYA AIRPORTS AUTHORITY.....RESPONDENT

AND

P.G. KAINGU & CO. ADVOCATES.....ADVOCATES/APPLICANT

VERSUS

WILLIAM KAZUNGU SIMBAH.....CLIENT/RESPONDENT

RULING

The applicant filed application dated 30th November, 2020 under the provisions of section 1A, 1B, 3A and 80 of the Civil Procedure Act, paragraph 11 of the Advocates Remuneration Order and seeking for orders that;

- a) This court be pleased to review the orders made on 20th November, 2020 by the deputy Registrar of this court (Hon. Kyany'a) striking out the taxation Ruling dated 5th March, 2020.*
- b) In the alternative, this court do review and set aside its Ruling made on 20/11/2020 and instead to write reasons for its decision of 5th March, 2020 in line with the provisions of paragraph 11 of the Advocates Remuneration Order.*
- c) This court be pleased to stay execution of the orders made on 20/11/2020 till the hearing of this application*
- d) This court be pleased to issue such other or further orders as ay be fair and just to secure the applicant's constitutional freedoms.*
- e) Costs be provided for.*

The application is supported by the affidavit of Philip Kaingu Advocate and on the grounds that the law firm filed advocate/client bill of costs dated 3rd September, 2019 and after filing written submissions on 5th March, 2020 the Deputy Registrar delivered ruling and awarded the advocates Ksh.1, 311,556.44.

On 6th March, 2020 the client filed objections to the taxation but no reasons were written to him on the items he raised objection. The client filed application dated 11th August, 2020 seeking stay of execution of the Certificate of Taxation and extension of time within which to file a reference. when the matter came up for hearing, the court sent the file back to the Deputy Registrar so as to enable her deal with the objection.

On 28th September, 2020 the Deputy Registrar directed the parties to file written submissions on the objection and on 20th November, 2020 a ruling was delivered which was totally outside what the parties had argued and presented. The Bill of Costs dated 3rd September, 2019 and filed by Advocates was an Advocate/Client Bill of Costs and not a party and party bill of costs.

The consent alluded to by the Deputy Registrar and which settled the claim was entered into between the claimant and the respondent had nothing to do with the costs payable by the client.

There is an error apparent on the face of the face of the record as the ruling that was delivered was not based in the facts that were presented. Only fair that the orders sought be issued.

In reply, the claimant filed his Replying Affidavit and avers that the application is premature and filed to frustrate the ruling delivered on 20th November, 2020 striking out the ruling dated 5th March, 2020 recalling the warrants of attachment and further ordering the advocates to bear the auctioneers fees.

The claimant also avers that there is no error apparent on the face of the record as alleged and ruling delivered on 20th November, 2020 was based on the facts presented before the court.

The applicant submitted and reiterated the application and the Supporting Affidavit.

The claimant submitted that the application is premature and in abuse of court process and there is no error apparent on the record.

The advocate filed advocate/client bill of costs on 5th September, 2019 and a ruling delivered on 5th March, 2020 and the claimant being dissatisfied filed objection to the taxation and reasons thereof. The advocate proceeded to execute forcing the claimant to file application for stay of execution.

The court has no jurisdiction to review a ruling of the taxing master and only a reference to this court can cure any matter thereof under the provisions of paragraph 11(2) of the Advocates Remuneration Order and not by a review under section 80 of the Civil Procedure Act as held in **Hezekiel Oira t/a H. Oira Advocates v Kenya Broadcasting Corporation [2015] eKLR**.

This court cannot write reasons for the taxing master following its ruling under Paragraph 11 of the Advocates Remuneration Order.

Determination

The applicant is seeking the court to review the orders made on 20th November, 2020 by the Deputy Registrar striking out the taxation ruling dated 5th March, 2020 and that the same be set aside and in the alternative write reasons for the decision of the ruling delivered on 5th March, 2020 in line with paragraph 11 of the Advocates Remuneration Order.

First, an application seeking review before this court must apply the provisions of Rule 33 of the Employment and Labour Relations Court (Procedure) Rules, 2016 which Rules apply. Such an application must relate to an order/decision of the judge who issued the subject order and must relate to an error or mistake on the record, rectification, or for a reasonable cause.

The instant application is based on the provisions of section 80 of the Civil Procedure Act. The applicant has also applied under the provisions of paragraph 11 of the Advocates Remuneration Order.

Section 80 of the Civil Procedure Act provides that;

80. Any person who considers himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act,

May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

On the other hand, paragraph II of the Advocates (Remuneration) Order provides inter alia: -

(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.

(4) the High Court shall have power in its discretion by order to enlarge the 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.

Section 80 of the Civil Procedure Act grants the High Court power to review its orders similar Rule 33 of this court Rules. However, under

Paragraph 11 of the Advocates Remuneration Order, on the decision of the Taxing Officer/Master, provides for the filing of a Reference within 14 days of receipt of the reasons for the taxation. see **Muri Mwaniki & Wamiti Advocates v African Banking Corporation Limited [2020] eKLR** and in the case of **Ahmed Nassir v National Bank of Kenya Ltd [2006] E.A** that;

Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons ...

A reference to this court is imperative. The subject order sought to be reviewed relates to the Taxing Officer and Deputy Registrar of this court.

The review application must be before the Taxing Officer. Upon order of the Taxing Officer, this court can only address a reference thereof. This court Order has not issued so as to be moved for a review. The issue and matter at hand relates to the order of the taxing officer.

The applicant is not properly before this court. even where the case was proper, under Rule 33 of the Court Rules, the subject order sought to be reviewed does not relate to an order of the court but that of the Deputy Registrar.

Accordingly, application dated 30th November, 2020 is found without good foundation and is hereby dismissed. each party shall bear own costs.

DELIVERED IN OPEN COURT AT NAIROBI THIS 11TH DAY OF MAY, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and