



**Lavington Security Limited v Lavington United Sacco Society Limited (Civil Suit E116 of 2019) [2024] KEHC 866 (KLR) (Commercial and Tax) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 866 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E116 OF 2019  
A MABEYA, J  
JANUARY 30, 2024**

**BETWEEN**

**LAVINGTON SECURITY LIMITED ..... PLAINTIFF**

**AND**

**LAVINGTON UNITED SACCO SOCIETY LIMITED ..... DEFENDANT**

**RULING**

1. The Motion for determination is dated 26/1/2023 brought by the plaintiff under Sections 1A, 3B, 3A of the *Civil Procedure Act* and Rule 11 of the *Advocates Remuneration Order*. It is supposed to be a reference against the decision dated 9/6/2022 on the taxation of the plaintiffs' bill of costs dated 30/3/2022.
2. The reference sought to set aside the ruling of Hon. Githongori Stephany dated 9/6/2022. The grounds were set on the face of the Motion as well as in the supporting affidavit of Gitonga Kithinji Muriuki sworn on 26/1/2023. These were that the taxing officer taxed the bill at Kshs. 240,280/= instead of Kshs. 2,624,667/94. That she ignored to consider the value of the subject matter of the main suit and counter claim.
3. That the taxing officer failed to award 1/3 addition of the taxed amount of the Advocate for the Applicant/Defendant as well as V.A.T.
4. The Motion was opposed vide the Replying Affidavit of Vincent Kiptoo sworn on 14/2/2023. It was contended that the judgment of 8/10/2021 dismissed both the suit and the counterclaim. That following the judgment, both parties lodged bills of costs that were taxed at Kshs. 236,475 for the defendant and Kshs. 240,280/= for the plaintiff.



5. That the reference was barred as it was filed 4 months after the taxation and therefore affected the provisions of Rule 11 of the *Advocates (Remuneration) Order*. That no notice of objection was filed. That no application for leave had been made.
6. Gitonga Kithinji Muriuki responded to the averments of Vincent Kiptoo in his reply sworn on 21/3/2023. He stated that the defendant did file a Notice of Objection on 14/9/2022 well within 14 days. That the court should determine the matter on merit and not on technicality.
7. Both parties filed their respective submissions dated 3/7/2023 and 4/8/2023 which I have carefully considered.
8. This is a reference against the ruling of Hon Stephanie Githogori (DR) made on 9/9/2022. The foundation for a reference is Rule 11 of the *Advocates (Remuneration) Order*. The same provides:-
  - “ 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 14 days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be serve on all the parties concerned setting out the grounds of his objection.
  - .....”
9. The plaintiff objected to the Motion on the grounds that it had been filed without a Notice of objection and out of time. That there was no valid reference before Court for determination.
10. I have perused the record. I have found a Notice of Objection filed by the defendant on 14/9/2023 which was within 14 days. The first limb of the objection fails.
11. The second limb is that the Motion was filed out of time. That it was filed on 27/1/2023 which was 4 months after the delivery of the impugned ruling. The defendant did not respond to this part of the objection. It only contended that the court do determine the matter on merit and not on technicality.
12. The record shows that although the notice of objection was filed within time, the reference was not lodged within 14 days thereafter. This is so considering that the reasons for the taxation were in the well-reasoned ruling of the taxing officer. It was not contended that the defendant did subsequent to the notice of objection of 14/9/2022 request for or receive any reasons other than the ones in the ruling.
13. In my view, if the timelines set out in both sub rules (1) and (2) of Rule 11 were for cosmetic purposes and therefore technical, the legislature had no business to enact sub-rule 4 thereof that provides for extension of time. Such extension of time will be granted for good reason.
14. In view of the foregoing there is no competent reference before Court. The application dated 26/9/2023 is therefore dismissed with costs.

It is so ordered.

**DATED AND DELIVERED AT VIRTUALLY THIS 30<sup>TH</sup> DAY OF JANUARY, 2024.**

**A. MABEYA, FCI Arb, EBS**

**JUDGE**

