



**Mwaniki Gitau & Co. Advocates v Njoroge (Miscellaneous Application E055 of 2018)
[2024] KEHC 851 (KLR) (Commercial and Tax) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E055 OF 2018
FG MUGAMBI, J
JANUARY 30, 2024**

BETWEEN

MWANIKI GITAU & CO. ADVOCATES APPLICANT

AND

ESTHER WAMBUI NJOROGE RESPONDENT

RULING

Background

1. This ruling determines the application dated 30th January 2023 brought under Rule 11(2) of the [Advocates Remuneration Order](#) (ARO). The client seeks to have the ruling of the taxing master (Hon. C. Wanyama) delivered on 30th June 2022 in respect of the advocate/client bill of costs of 24th July 2018 reviewed and set aside.
2. The application is supported by the affidavit sworn by Esther Wambui Njoroge, the respondent herein. It is premised on the grounds that the advocate's bill of costs was fatally defective as it had no supporting documents to prove that the advocate had rendered any legal services to the client as itemized in the bill of costs.
3. The client refuted the awarding of instructions fees of Kshs. 20,000/= under item 1 of the bill of costs terming it as speculative. The other claims by the client are that the taxing master applied the wrong principles of law and fact in arriving at the award of Kshs. 46,099/= and failed to use her discretion in a judicious and fair manner. Finally, the client also took issue with the advocate's failure to file written submissions as directed by the court.
4. The application is opposed *vide* a replying affidavit sworn by Joseph Mwaniki Gitau in which the advocate does not deny not filing written submissions before the taxing officer. It is however confirmed



that the advocate filed their list and documents in support of the bill of costs dated 12th August 2020. The advocate avers that the Court considered the documents which is evidenced by the reasons given in the ruling. These documents, they state, substantiated the bill of costs. The advocate defends the ruling by the taxing officer terming it reasonable and within her discretion.

5. In addition to the replying affidavit, the advocate also filed a notice of preliminary objection dated 15th May 2023 premised on the fact that the application contravenes rule 11(2) of the ARO. Parties filed and exchanged written submissions on both the preliminary objection and the application.

Analysis

6. I have carefully considered the pleadings and written submissions by the opposing parties. I will first of all deal with the preliminary objection as the outcome of this will have a direct bearing on the substantive application.
7. Rule 11 of the ARO provides 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.
 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.”
8. In response to the preliminary objection, the client submits that the ruling of the taxing officer which was delivered on 30th June 2022 was delivered in a summary manner. It was unwritten and did not provide reasons at the time. The client therefore in compliance with rule 11(1) wrote to the Deputy Registrar on 8th July 2022 requesting for the typed ruling together with reasons.
9. A copy of the ruling was collected by the client on 17th January 2023, about 5 months later. While the client does not disclose why it took 5 months to access the reasons from the taxing officer, they nonetheless state that the reference was filed within 14 days from 17th January 2023 and was therefore within the stipulated timelines.
10. The advocate denies that the said ruling as delivered was initially delivered in a summary manner. It is their case that the ruling contained reasons for the ruling and that it was therefore not useful for the client to await any further reasons before filing its reference.



11. The application of rule 11(1) of the *ARO* has been a subject of judicial interpretation in cases such as in *Ahmed Nassir V National Bank of Kenya Ltd*, [2006] E.A. The Court held that:

“ Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Hon. 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. where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of sub-rule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

12. What is not clear is whether indeed the ruling that was initially delivered was delivered in summary as indicated. I say so noting that on the face of it, the said ruling is titled Ruling on the Advocate/Client Bill of Costs and Reasons for the Ruling.
13. The client also wishes for this court to find that after the letter of 8th July 2022, the ruling by the taxing officer was availed to the parties in January of 2023. These averments were up to the respondent to prove. Moreover, the client does not attempt to explain and prove what transpired in between the 5 or so months between July 2022 and January 2023. There is no evidence of follow up leaving doubt as to whether indeed the ruling may have been availed to parties way earlier than 17th January 2023.
14. One final point on which I concur with the advocate is that the client would have considered as an alternative, a prayer for expansion of time to allow the court to consider the same. Having not done so, and in absence of any proof by the client that the said ruling of 30th June 2022 was first availed to the parties on 17th January 2023, this application must fail.

Determination

15. For the reasons that I have stated, I find merit in the advocate’s preliminary objection. I further hold that the instant application contravenes Rule 11(2) of the ARO 2014 having been filed more than 14 days after delivery of the ruling dated 30th June 2022.
16. It then consequently follows that the application dated 30th January 2023 is struck out with costs to the advocate.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30TH DAY OF JANUARY 2024.

F. MUGAMBI

JUDGE

