



**Muthomi Karanja Advocates v Nairobi City County Assembly (Application 2 of 2021)
[2024] KEHC 1666 (KLR) (Commercial and Tax) (23 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
APPLICATION 2 OF 2021
J NGAAH, J
FEBRUARY 23, 2024**

BETWEEN

MUTHOMI KARANJA ADVOCATES ADVOCATE

AND

NAIROBI CITY COUNTY ASSEMBLY CLIENT

RULING

1. The application before court is a summons dated 11 August 2022. It is a reference to this Honourable Court against the decision of the taxing officer on the advocate-client bill of costs dated 25 May 2021. The taxing officer's ruling was delivered on 2022.
2. The reference is made under paragraph 11 of the *Advocates (Remuneration) Order* and sections 3 and 3A of the *Civil Procedure Act*, cap. 21. The orders sought are framed as follows:
 - 1) The Honourable Court be pleased to stay the decision of the Taxing Officer pending the hearing and determination of this reference.
 - 2) The decision of the taxing master delivered by Hon. C.A. Muchoki delivered on the 10th March 2022 in so far as the same relates to the reasoning and determination, pertaining to the taxation of the Bill of Costs dated 25th May, 2021 be set aside.
 - 3) The Honourable Court be pleased to refer the matter back for re-taxation of the Bill of Costs and with proper directions thereof.
 - 4) In the alternative to prayer 2, the Honourable Court exercises its inherent jurisdiction and be pleased to re-tax the Bill of Costs dated 25th May, 2021 afresh and/or make directions to a fresh taxation.



- 5) The Costs of this Application be provided for.”
3. The application is supported by the affidavit of Edward O. Gichana who has sworn that he is the clerk to the client/applicant assembly.
4. Although the reference is filed as such, the depositions by Gichana in the affidavit supporting the reference are worded in such a way that the deponent anticipates the filing of a reference in the future.
5. In paragraphs 6 and 12, he has sworn as follows:
 - 6) I am advised that apart from getting information on the decision of the court late, the Respondent was unable to file the reference it intends to file within the required time because it took it, inordinately long to obtain a copy of the Ruling to enable it file a proper reference as it intended.
 - 12) For the reasons stated above, the Respondent is desirous of filing a Notice of Objection and Reference for consideration by the Court.” (Emphasis added).
6. These depositions betray the status of the reference by relegating it to an application filed in anticipation of a reference.
7. Be that as it may, the applicant has otherwise impugned the taxing officer’s decision on the ground that the bill of costs as taxed is inordinately high and excessive. In taxing the bill of costs as she did, the taxing officer is faulted for, among other things, having failed to consider the time when the advocate-respondent was instructed to act for the applicant.
8. The advocate-respondent firm of advocates opposed the reference and filed a replying affidavit to that effect. Besides the replying affidavit, the advocates also filed a preliminary objection dated 25 July 2023. The objection is couched in the following terms:
 1. This Honourable Court lacks the requisite jurisdiction to entertain, hear or determine this matter for the reference is-
 - (a) time-barred by operation of paragraph 11 (2) of the Advocates Remuneration Order, 1962 (“the ARO”) having not been filed within fourteen (14) days of the decision of the taxing master delivered by Hon. C.A.Muchoki on 10th March 2022;
 - (b) filed without leave of this Honourable Court contrary to paragraph 11 (4) of the ARO; and
 - (c) ultra vires the holding embodied in this Honourable Court’s decision delivered by the Honourable Mister Justice Jairus Ngaah on 21st June 2023 (that enlarged the time to file the reference by seven (7) days from 21/6/2023; and
 2. Given the preceding, the reference is-
 - (a) aberrant and illegally intended to broaden this Honourable Court jurisdiction;
 - (b) an abuse of this honourable court process;
 - (c) foredoomed to fail by operation of the law; and
 - (d) ripe for dismissal with costs.”
9. It is this preliminary objection that this Honourable Court is concerned about at the moment and, therefore, the subject of this ruling.



10. The record shows that by a motion dated 11 August 2022, the applicant-client sought for, among other orders, enlargement of time to file a reference against the decision of the taxing officer to which reference has already been made. On 16 June 2023, the application was allowed to the extent that the period within which the reference ought to have been filed was extended. Accordingly, the applicant was directed to file and serve the reference within seven days from the date of the ruling.
11. It follows that the reference ought to have been filed by 23 June 2023. But the one on record was filed on 17 July 2023, which was more than three weeks past the deadline.
12. The reference was obviously filed out of time. However, no reason has been given for the delay and neither was any leave sought or granted for further extension of time. The application is, therefore, incompetent to the extent that it is contrary to paragraph 11 of the *Advocates Remuneration Order*. This paragraph reads as follows:
 11. Objection to decision on taxation and appeal to Court of Appeal
 - (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.
13. Except for subparagraph (3) which relates to appeals from this Honourable Court to the Court of Appeal, the rest of the sub-paragraphs are relevant to the conclusion that, for the reasons already given, the applicant's reference is incompetent and an abuse of the process of this Honourable Court.
14. In the circumstances, the advocate-respondent's preliminary objection is sustained and the applicant's reference is hereby struck out with costs. It is so ordered.

SIGNED, DATED AND UPLOADED ON THE CTS PORTAL ON 23 FEBRUARY 2024

NGAAH JAIRUS

JUDGE

