



**CMMM (Suing as Mother and Next of the Minors) v International & another;  
Board of Management, Lukenya Schools/Lukenya Academy and Board of  
Management, Moi Forces Academy Lanet & 2 others (Interested Parties) (Civil  
Case E001 of 2022) [2024] KEHC 11223 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11223 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E001 OF 2022  
HI ONG'UDI, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**CMMM ..... APPELLANT  
SUING AS MOTHER AND NEXT OF THE MINORS**

**AND**

**GAPLINK INTERNATIONAL ..... 1<sup>ST</sup> RESPONDENT  
JOSEPH KAMAU KIMANZI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**BOARD OF MANAGEMENT, LUKENYA SCHOOLS/LUKENYA ACADEMY  
AND BOARD OF MANAGEMENT, MOI FORCES ACADEMY  
LANET ..... INTERESTED PARTY  
LUKENYA ACADEMY AND BOARD OF MANAGEMENT, .... INTERESTED  
PARTY  
MOI FORCES ACADEMY LANET ..... INTERESTED PARTY**

**RULING**

1. In the Chamber summons dated 22<sup>nd</sup> April 2024 the applicant prays for the following orders;
  - i. Spent.
  - ii. That the honourable court be pleased to stay the execution of the ruling and certificate of costs in the matter herein pending the hearing and determination of this application.



- iii. That the application be granted leave to file an objection to taxation and a Taxation Reference to this honourable court against the Ruling of the honourable court's taxing officer delivered on 22<sup>nd</sup> March 2024.
  - iv. That the leave granted in prayer (iii) above do operate as stay of execution of the Ruling of the Taxing Officer aforesaid and any other consequential proceedings.
  - v. That the objection to the Taxing officer's ruling annexed hereto be deemed as duly filed and served upon payment of requisite fees.
  - vi. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face as well as the affidavit sworn on even date by Tom Mboya, the Chief Executive Officer of the applicant. He deposed that on 22<sup>nd</sup> March, 2024 the Taxing Officer delivered her Ruling wherein the Bill of Costs was taxed at Kshs. 226,230/= without giving reasons. Further, that the applicant being aggrieved by the said ruling, instructed its advocate on record to file a reference against the said ruling. He added that the applicant had requested to be supplied with a copy of the ruling and reasons for the said taxation. However, the same had not been supplied until now.
  3. For the above said reasons the applicant was therefore not able to file its notice of objection to taxation within 14 days as specified under Paragraph 11(1) of the Advocates Remuneration Order, 2014. Further, that the applicant wished to file a Reference against the taxed Bill of Costs. The reason being that the said amount was manifestly excessive and contrary to the law and principle and should thus be reduced. He deposed that it was in the interest of justice that leave be granted to allow the applicant to file a notice of objection to the taxation and a reference and that there be a stay of execution of the said ruling and certificate of costs.
  4. In response to the application, appellant/respondent filed a replying affidavit dated 3<sup>rd</sup> May 2024. She averred that the applicant ought to be compelled to pay the undisputed amount of kshs.104,700/= pending hearing and determination of the application for stay of execution. She averred further that she was opposed to the application for reasons that it was bereft of merits, premised on material non-disclosure, gross misrepresentation of facts and was made in utter bad faith with the sole intention of delaying and denying execution.
  5. She averred further that the reasons for taxation were fully captured in the Ruling dated and delivered on 22<sup>nd</sup> March 2024 and the same was made available to the parties on the same day. Also, that at the point of reading the same, counsel for the applicant requested for a copy of the typed Ruling and the Taxing master obliged by way of handwritten Order found on the last page of the Ruling. She added that the applicant did not need further reasons outside the Ruling to file their objection.
  6. She went on to aver that the applicant had not demonstrated by way of evidence or at all that they made the slightest effort to obtain a copy of the Ruling of the Taxing Master. Further, that the applicant had been sitting pretty, waiting for time to lapse so as to make this application in a bid to further delay the payments due. She added that they had not started the process of execution as they have been engaging counsel for the applicant with a view to settling the matter. He urged the court to disallow the application with costs.
  7. The application was canvassed by way of written submissions.



### **Applicant's submissions**

8. These were filed by Konosi & Company advocates and are dated 29<sup>th</sup> May, 2024. Counsel identified two issues for determination by this court.
9. The first is whether this court should enlarge time to enable the 2<sup>nd</sup> respondent/applicant file a reference against the ruling of the taxing master out of time. Counsel submitted that the applicant filed his application immediately after the lapse of the stay orders issued by the taxing officer and had given sufficient reasons as to why the notice of objection has not been filed immediately after the ruling as is prescribed by the law.
10. Counsel submitted further that the applicant had applied for the ruling and a copy of the said letter was also shared with the appellant/respondent herein immediately after its delivery. She added that the applicant had made all the necessary effort including visiting the court's registry and had been informed that the physical file was still in the Magistrate's chamber. He went on to submit that the present application had been filed without undue delay and therefore the court ought to exercise its discretion and extend time in favour of the applicant.
11. The court's attention was drawn to paragraph 11 of the Advocates Remuneration Order (ARO), and the judicial decisions in *County Executive of Kisumu v County Government of Kisumu & 8 Others* [2017] eKLR and *County Government of Tana River v Miller and Company Advocates* [2021] eKLR.
12. The second issue is whether the court should stay the execution of the taxation ruling. Counsel submitted that there was indeed a threat of execution since the Appellant was in the process of obtaining the certificate of costs and would at any time proceed to obtain judgment. That unless the applicant is granted stay of execution the intended reference would be rendered nugatory and as such he will suffer substantial loss.
13. He placed reliance on Order 42 rule 6(1) of the Civil Procedure Rules and the cases of: *County Government of Tana River (supra) RWW v EKW* [2019] eKLR and *Magdalena Alphonse Cheposowor v Cheposupko Lonyareng & 5 Others* [2021] eKLR.
14. In conclusion, he urged the court to allow the application with costs in the applicant's favour.

### **Respondent's submissions**

15. These were filed by Sabaya & Associate company advocates and are dated 20<sup>th</sup> June, 2024. Counsel while relying on Order 42 of the Civil Procedure Rules and the case of: *Miller & Company Advocates V China Roads & Bridge Corporation (Miscellaneous Application 168 of 2019)* [2021] KEHC 408 (KLR) (Commercial and Tax) (16 December 2021) (Ruling) submitted that the applicant had not laid out its case for stay of execution. Further, that the 30 days delay may not be prima facie inordinate but the applicant failed when it came to the remaining two limbs that is substantial loss and security for costs.
16. Counsel submitted further that it was the duty of the applicant to apply for and make requisite payments in order to obtain a copy of the ruling once it was delivered. That no payment receipt had been attached to show it requested for the ruling and made the requisite payment or at all. In addition, that, the request letter dated 25<sup>th</sup> March, 2024 did not bear a court registry stamp and the same did not appear in the e-filing portal.
17. Counsel went on to submit that the present application emanated from a highly contested children custody case that was still on ongoing and entertaining it any further would be prejudicial to the best interest of the minors involved. She urged the court to disallow the application with costs.



## Analysis and determination

18. I have considered the application, the affidavits, grounds of opposition and the submissions by both parties. I opine that the main issue for determination is whether the application dated 22<sup>nd</sup> April 2023 is merited.
19. It is the applicant's contention that the Taxing Officer in her Ruling taxed the Bill of Costs at Kshs. 226,230/= without giving reasons. It contends further that being aggrieved by the said ruling, it instructed its advocate on record to file a reference against the said ruling. It also requested for a copy of the ruling and reasons for the said taxation but the same had not been supplied to enable it file its notice of objection to the taxation within 14 days as specified under Paragraph 11(1) of the Advocates Remuneration Order, 2014.
20. The appellant/respondent on her part argued that the reasons for taxation were fully captured in the Ruling and the same was made available to the parties on the same day. Also, that at the point of reading the ruling the applicant's counsel requested for a copy of the typed Ruling and the Taxing master obliged by way of a handwritten Order found on the last page of the said Ruling. She added that the applicant did not need further reasons outside of the Ruling to file its objection.
21. This court having perused the record notes that the Ruling on the party to party costs was delivered on 22<sup>nd</sup> March 2024 and the Bill of costs was taxed at Ksh 388,120/=. The court listed the items giving reasons as to how they were taxed in almost all of them and ordered for a copy of the Ruling to be supplied to the parties. The application was filed on 22<sup>nd</sup> April 2024 which is exactly one (1) month or 30 days from the date of the ruling. The Applicant has stated that the delay to file the reference was because it had requested for a copy of the ruling and reasons for the said taxation but the same had not been supplied.
22. The other issue is on enlargement of time to file a reference. Taxation of bill of costs is governed by Paragraph 11 of the Advocates' Remuneration Order which states 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 subparagraph (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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
  - (5) 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.”

23. The provisions of this paragraph were further expounded by the Supreme Court in the case of County Executive of Kisumu v County Government of Kisumu & 8 others (2017) eKLR where the court held that: -

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as: “the underlying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

24. In view of the above it is evident that there has to be valid and clear reasons, upon which the court's discretion can be favourably exercised in enlarging time to file reference. In the present application the applicant is disputing the entire advocate/client's bill of costs on the grounds that no reasons for the taxation were given by the Taxing Officer.

25. In *Ahmed Nassir v National Bank of Kenya Ltd* [2006] EA the court held:

“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.”

26. Further, the Court of Appeal in the *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR the court held thus:

“It is true that the taxing officer did not record the reasons for the decision on the items objected to after receipt of the respondent’s notice. It seems that the taxing officer decided to rely on the reasons in the ruling on taxation dated 23<sup>rd</sup> February, 2004. That ruling at least indicated the formula that the taxing officer applied to assess the instructions fees. Although there was no strict compliance with Rule 11 (2) of the Order, we are nevertheless, satisfied that there was substantial compliance.”

27. Additionally, in *Evans Thiga Gaturu Advocate v Kenya Commercial Bank Ltd HC Misc Appl. No. 343 of 2011*. The court held as follows;

“It is therefore clear that the interpretations by the Court especially the High Court on this issue is far and varied. In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.

However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference.”

28. I have closely examined the Ruling by Hon. Menya delivered on 22<sup>nd</sup> March 2024. It is clear that the learned Taxing Officer gave more than sufficient reasons for the various findings she made in relation to the differing items as contained in the Bill of Costs dated 7<sup>th</sup> August 2023. There was substantial compliance with the provisions of the said Rule 11 (2) of the Advocates Remuneration Order.

29. In the instant case, I find that the applicant did not provide a reasonable explanation for the delay in order to be granted an enlargement of time within which to file the Reference.

30. Consequently, the Chamber Summons Reference dated 22<sup>nd</sup> April, 2024 lacks merit and the same is dismissed with no order as to costs.

31. Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**

**JUDGE**

