



**Ntemi Limited v Claudio (Environment & Land Case 82 of 2020)
[2023] KEELC 16398 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16398 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 82 OF 2020**

**JO MBOYA, J
MARCH 16, 2023**

BETWEEN

NTEMI LIMITED PLAINTIFF

AND

JOSEPH K CLAUDIO DEFENDANT

RULING

1. Vide Chamber Summons Application (read Reference), dated the 24th May 2022, the Plaintiff herein has approached the Honourable Court seeking for the following reliefs;
 - i. That the Decision of the Deputy Registrar/Taxing Officer on Item NO.1 (Instructions Fees), dated 24th March 2022, on the Defendant's Bill of Costs dated 17th September 2021, be set aside and the resultant Certificate of Taxation quashed.
 - ii. That the Court do be pleased to re-tax the Bill of Costs on Item 1 afresh.
2. The instant Reference is premised and anchored on two grounds, which have been stated and enumerated in the body thereof. Besides, the Reference is similarly stated to be premised on (sic) grounds/statement dated the 24th May 2022.
3. Be that as it may, it is appropriate to state and underscore that the current reference is not supported by any affidavit, which ordinarily would contain the reasons/averments, upon which the certificate of taxation is challenged, or better still impugned.
4. Nevertheless, the instant Reference came up for hearing on the 6th February 2023, whereupon the advocates for the respective Parties agreed to canvass and ventilate same by way of written submissions. In this regard, the Honourable court proceeded to and set timelines for the filing and exchange of the written submissions.



5. Pursuant to and in compliance with the directions of the Honourable court, the Plaintiff/ Applicant filed Written Submissions dated the 23RD of February, 2023, whilst the Respondent filed written submissions dated the 1st March 2023.
6. For coherence and completeness, the two sets of written submissions form part and parcel of the record of the Honourable Court.

Submissions By The Parties

Applicant's Submissions

7. The Applicant herein has raised, highlighted and amplified two salient issues for consideration by the Honourable court.
8. Firstly, learned counsel for the Applicant has submitted that the Ruling in respect of the Party and Party Bill of costs, was variously adjourned by the taxing officer and same was ultimately delivered on the 24th March 2022, albeit without notice to the Applicant herein.
9. Furthermore, learned counsel has submitted that to the extent that the taxing officer neither issued nor served the requisite notice for delivery of the ruling, the Applicant herein was thus not aware of or privy to the scheduled delivery of the impugned ruling.
10. As a result of not been notified of the scheduled date for delivery of the ruling, learned counsel has therefore contended that the Applicant was therefore deprived and divested of the requisite opportunity to timeously file and serve the Notice of objection to taxation.
11. Despite the foregoing, learned counsel for the Applicants has conceded and admitted that same did not file the requisite Notice of objection to taxation within the statutory and prescribed 14 days period, from the date of the delivery of the ruling.
12. Moreover, learned counsel added that same however proceeded to and filed a Notice of objection to Taxation on the 19th April 2022, upon discovering that the ruling had been delivered.
13. In the premises, learned counsel has submitted that the failure to file a Notice of objection to taxation within the prescribed and stipulated timelines, arose and was occasioned by the non-issuance of the Notice for the delivery of the ruling by the taxing officer.
14. Consequently and in this regard, counsel has therefore submitted that the failure to issue the notice of objection to taxation within the requisite timeline was therefore a procedural and technical lapse, which ought not to vitiate the reference herein.
15. In addition, learned counsel invited the Honourable court to take cognizance of and to apply the provisions of Article 159(2) (d) of *the Constitution*, 2010 which vests in the court the Jurisdiction to entertain and determine disputes without undue regard to procedural technicalities.
16. Secondly, learned counsel for the Applicant has submitted that the suit which was filed by the Applicant only related to a claim for mandatory injunction and delivery of vacant possession in respect of the suit property. For clarity, counsel has pointed out that the suit pleadings did not allude to any monetary value therein.
17. Furthermore, learned counsel has submitted that the suit which was filed by the Applicant was ultimately withdrawn pursuant to the provision of Order 25 Rule 1 of the Civil Procedure Rules, 2010, and hence same did not proceed to full hearing.



18. To the extent that the suit by the Applicant did not proceed to full hearing, Learned counsel contended and submitted that the costs due and awardable to the Defendant ought to have been nominal, taking into account the provisions of the Advocates Remuneration Order 2014.
19. Notwithstanding the foregoing, learned counsel has submitted that the taxing officer proceeded to and taxed instruction fees in the sum of Kes.1, 600, 000/= only, which amount was stated to be exorbitant and unreasonable.
20. In any event, learned counsel further added that the taxing officer adopted and applied the wrong principle in taxing and certifying the instructions fees.
21. Consequently, it was contended that the amounts at the foot of the instructions fees was therefore irregular, unreasonable and thus ought to be set aside.
22. Finally, learned counsel for the Applicant cited and quoted the decision in the case of Mariga versus Musila (1984)KLR at page 251, wherein the Honourable court elaborated the circumstances under which a court can interfere with the discretion of the taxing officer.
23. In a nutshell, Learned counsel for the Applicant has therefore implored the Honourable court to find and hold that the reference beforehand is meritorious and thus ought to be allowed.

Respondent's Submissions

24. On behalf of the Respondent, written submissions dated the 1st march 2023 were duly filed. For clarity, learned counsel for the Respondent has similarly raised, highlighted and amplified two issues for consideration and determination.
25. First and foremost, learned counsel for the Respondent has submitted that it was incumbent upon the Applicant to file and lodge the requisite Notice of objection to taxation within 14 days from the date of delivery of the ruling on taxation.
26. Additionally, learned counsel has further submitted that if for any reason, the Applicant was prevented from lodging and filing the requisite notice of objection to taxation within the set timeline, then it behooved the Applicant to apply for or seek for extension of time within which to file the Notice of objection out of time.
27. In this respect, counsel for the Respondent has submitted that the Applicant ought to have complied with the provisions of Rule 11(4) of The Advocates Remuneration Order, which vests and confers the Honourable court with the requisite Jurisdiction to extend and enlarge time.
28. Having neither sought for nor obtained extension of time within which to file the Notice of objection to taxation, learned counsel for the Respondent has therefore submitted that the impugned reference is therefore premature and incompetent.
29. In support of the foregoing submissions, learned counsel for the Respondent has cited and relied on the decision in the case of Matiri Mburu & Chepkemboi Advocates versus Occidental Insurance Company Ltd (2017)eKLR.
30. Secondly, learned counsel for the Respondent has submitted that the learned taxing officer applied the correct principle and took into account the relevant factors in arriving at the instructions fees, which was ultimately awarded to and in favor of the Respondent.



31. In addition, learned counsel has submitted that the Applicant herein has neither established nor demonstrated the requisite basis to warrant interference with the discretion of the learned taxing officer, as contained in the Certificate of Taxation under reference.
32. Furthermore, learned counsel has contended that prior to and before an appellate court can interfere with the exercise of discretion by the taxing officer, the appellate court ought to exercise deference to the decision of the taxing officer and should only interfere where it is shown that the taxing officer has acted on and applied a wrong principle or taken into account extraneous matters.
33. To vindicate the foregoing submissions pertaining to and concerning the instances where the court can interfere with the discretion of the taxing officer, learned counsel has cited and quoted inter-alia, the case of Kanu National Election Board & 2 Others versus Salah Yakub Farah (2018)eKLR, Direct Line Assurance Company Ltd versus Hamilton Harrison & Mathews Advocates (Misc. Civil Application No. E103 of 2020) (2021)KEHC 259 (KLR) (Commercial & Tax) (19th November 2021) and Joreth Limited versus Kigano & Associate (2002)eKLR, respectively.
34. Premised on the foregoing, learned counsel for the Respondent has therefore contended that the reference before the Honourable court is not only premature and misconceived, but same is legally untenable.

Issues For Determination

35. Having evaluated and reviewed the Chamber Summons (Reference) dated the 24th May 2022 and upon considering the written submissions filed by and on behalf of the respective Parties, the following issues do arise and are thus worthy of determination;
 - i. Whether the Reference before the Honourable court is competent or otherwise, on the face of Rule 11(1) of the Advocates Remuneration Order.
 - ii. Whether the Honourable Court is seized of the requisite Jurisdiction to entertain and adjudicate upon the reference.

Analysis And Determination

Whether the Reference before the Honourable court is competent or otherwise, on the face of Rule 11(1) of the Advocates Remuneration Order.

36. It is common ground that the Applicant herein filed and lodged the current suit against the Respondent and wherein the Applicant contended that same was the registered owner and/or proprietor of all that parcel of land known as L.R No. 209/14159 (I.R No. 87101) measuring 0.0886 Ha, situated on Elgon Road, Upper Hill Area, within the City of Nairobi.
37. Suffice it to point out the Applicant herein thereafter sought for various reliefs, inter-alia, mandatory injunction and general damages for conversion and trespass onto to the suit property (sic) by the Defendant.
38. Nevertheless, there is no gainsaying that later on the Applicant sought for and obtained, leave to withdraw the suit. For clarity, the suit was thereafter marked as withdrawn with costs to the Respondent.
39. Following the withdrawal of the suit, the Respondent herein proceeded to and indeed filed the Party and Party bill of costs, which was ultimately taxed vide ruling/certificate of taxation rendered on the 24th March 2022.



40. It is the said ruling, which has provoked the filing of the current reference. However, the Applicant contends that the impugned ruling was rendered and delivered without due notice to the Applicant or her counsel on record.
41. Additionally, the Applicant contends that same only became aware of the delivery of the impugned Ruling on the 11th April 2022 and thereafter, obtained a copy of the ruling on the 19th April 2022.
42. As a result of not having been duly served and issued with (sic) the notice of delivery of the ruling by the taxing officer, the Applicant contends that same was therefore deprived and divested of the requisite opportunity to file/lodge a Notice of objection to taxation within the statutory 14 days.
43. Nevertheless, counsel for the Applicant has further submitted that same thereafter lodged and filed the notice of objection to taxation on the 19th April 2022 and that the said notice, which was apparently filed out of time, suffices in terms of Rule 11(1) of the Advocates Remuneration Order.
44. Furthermore, the Applicant has further contended that the failure to file and lodge the requisite Notice of objection to taxation within the prescribed time line is a procedural and technical matter which ought not to defeat the current reference. In this regard, learned counsel for the Applicant has invoked and relied upon the provisions of Article 159(2) (d) of *the Constitution*, 2010.
45. Despite the various contentions by and on behalf of the Applicant, there is no gainsaying that the Applicant herein did not file or lodge the requisite Notice of objection to taxation within the prescribed and statutory 14 days period, in terms of Rule 11(1) of the Advocates Remuneration Order.
46. Additionally, it is also not lost on the Honourable court that the Applicant herein similarly neither sought for nor obtained extension/enlargement of time within which to file and serve the Notice of objection to taxation.
47. For clarity, the provisions of Rule 11(4) of the Advocate Remuneration Order provides and contains a window for any Applicant, who was unable to lodge the Notice of objection to taxation within the statutory duration.
48. Consequently and assuming that the Applicant herein was (sic) not duly served with the ruling notice by the taxing officer, it was still incumbent upon the Applicant to seek for and obtain extension of time to file the requisite Notice of objection to taxation.
49. Clearly and to my mind, the Applicant would have had a good basis and reason to procure extension of time, if indeed, same was not served with the requisite Notice for the delivery of the Ruling.
50. However, despite the existence of Rule 11(4) of the Advocates Remuneration Order (which provides the window for extension of time), the Applicant herein threw caution to the wind and better still disregarded the law.
51. According to the Applicant, the fact that the same was (sic) not served with the ruling notice was enough to enable him/her to disregard the law and file the Notice of objection to taxation out of time and in contravention of the applicable laws.
52. At any rate, it is also imperative to recall that the Applicant herein was still at liberty to file an application and to seek the indulgence of the Honourable court to enlarge time and where appropriate, deem the Notice of objection as duly filed and served.
53. However, I must observe that despite there being sufficient latitude and opportunity to redeem the reference herein, the Applicant has remained adamant and still has the audacity to contend that the terms of Rule 11(1) of the Advocate Remuneration Order are neither mandatory nor peremptory.



54. In any event, learned counsel for the Applicant has gone further and contended that the provisions of Rule 11(1) of the Advocates Remuneration Order are merely procedural in nature and therefore ought not to vitiate or invalidate the reference. In this regard, the Applicant has bravely cited and relied on the provisions of Article 159(2) (d) of *the Constitution* 2010.
55. To my mind, the provisions of Rule 11(1) of the Advocates Remuneration Order, are not merely procedural but substantive in nature and in fact same provides and constitutes the legal foundation/fulcrum upon which the intended reference is anchored and premised.
56. In this regard, there is no gainsaying that in the absence of a timeous and valid notice of objection to taxation, then one (read Applicant) cannot mount and sustain a valid reference, whatsoever.
57. By parity of reasoning, a notice of objection to taxation as envisaged vide rule 11(1) of the Advocates Remuneration Order is akin to a Notice of Appeal provided for vide Rules 74 and 75 of the Court of Appeals Rules, 2010, which founds the basis of any appeal to the Honourable Court of appeal.
58. In short, where no valid notice of objection to taxation has been duly filed/lodged in accordance with Rule 11(1) of the Advocates Remuneration Order, then the resultant reference, (including the one beforehand) becomes incompetent and invalid.
59. In this regard and to underscore the importance of a Notice of objection to taxation, it is imperative to take cognizance of and reiterate the holding of the Court of Appeal in the case of Machira & Co Advocates versus Arthur K Magugu & Another (2012)eKLR, where the Court of Appeal stated and observed as hereunder;
 12. Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects.” As the trial judge correctly found, the Respondents notice of 1st August 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.
 13. As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeals or reviews was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of 1st August 2001 was fatally defective. It follows that the Respondents reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out.
 14. Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master’s decision was received is immaterial and does not avail the Respondents. Under sub-rule (2), time stops running from the date a proper notice is filed, which of course must be within 14 days of taxation, until receipt of the taxing master’s reasons for his decision.
60. Furthermore, even though counsel for the Applicant has contended that Rule 11(1) of the Advocates Remuneration, is merely procedural and cannot vitiate the reference, the obtaining Jurisprudence is however to the contrary.



61. On the other hand, even though the Applicant invoked and relied on the provisions of Article 159(2) (d) of *the Constitution* 2010, it must be recalled that the said provisions are not a cure/ panacea to every intentional and deliberate disregard and none compliance with the law.
62. To this extent, the position as pertains to compliance with all the Rules and Provisions of the relevant laws, was underscored and duly amplified by the Court of Appeal in the case of Mumo Matemu Versus Trusted Society Of Human Rights Alliance & 5 Others Civil Appeal No. 290 of 2012 as follows;
- “In our view it is a misconception to claim, as it has been in recent times with increased frequency, that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under Section 1A and 1B of the *Civil Procedure Act* (Cap 21) and Section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases.”
63. Furthermore, the significance of the rules of procedure and the need to observe and comply with same, particularly those that are intertwined with the substance and thus relevant to the just determination of the dispute beforehand, was also underscored by the Supreme Court of Kenya in the case of Moses Mwigigi & 14 others versus Independent Electoral and Boundaries Commission & 5 others [2016] eKLR, where the court held as hereunder;
- “(65) This Court has on a number of occasions remarked upon the importance of rules of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case, that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the Court would not hesitate to declare the attendant pleadings incompetent.”
64. Having not filed and lodged the requisite Notice of objection to taxation within the prescribed time line, there is no gainsaying that the resultant reference which was filed by the Applicant herein, is indeed pre-mature, incompetent and stillborn.
65. I have pointed out elsewhere herein before that Rule 11(1) of the Advocates Remuneration Order, is paramount and imperative and thus a failure to comply therewith is not a procedural defect curable vide Article 159(2) (d) of *the Constitution* 2010, in the manner contended and propagated by counsel for the Applicant.
66. Consequently and in the premises, my answer to issue number one is that the instant Reference, which was filed in contravention of the established Rules of Procedure governing Reference(s), is incompetent and ex-facie misconceived.

Whether the Honourable Court is seized of the requisite Jurisdiction to entertain and adjudicate upon the Reference.

67. It is common ground that the Jurisdiction of a court to entertain and adjudicate upon a subject dispute is donated and conferred either by *the constitution* or by the relevant statute.
68. To this end, the ratio decidendi of the Supreme Court of Kenya in the case of Samuel K. Macharia versus Commercial Bank Ltd (2012)eKLR, is succinct and appropriate.



69. For coherence, the Supreme Court stated and held at paragraph 68 thereof, as hereunder;

"(68) A Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

70. Consequently and before entertaining any dispute beforehand, it behooves the court to discern and authenticate whether same is seized of the requisite Jurisdiction and better still, whether the essential pre-requisites that underline the Jurisdiction of the Court have been complied with.

71. As concerns the Jurisdiction to entertain and interrogate the Reference challenging the certificate of taxation, it is common ground that the jurisdiction is donated vide the provisions of Rule 11 of the Advocates Remuneration Order, 2014.

72. In this regard, the provisions of Rules 11 of the Advocates Remuneration Order, becomes relevant and same are reproduced as hereunder;

" 11

- (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) 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.”

73. While discussing issue number one herein before, the court found and held that the Applicant failed or neglected to lodge the requisite Notice of objection to taxation within the statutory timeline.
74. Having failed or neglected to file and lodge the named Notice of objection to taxation, which is the launch pad and thus leverage that confers Jurisdiction on the Honourable court, the question that does arise is whether the Honourable court is seized of the requisite Jurisdiction.
75. In the absence of the requisite Notice of objection, it is my humble, albeit considered position that the Honourable court would neither be seized of nor vested with the requisite Jurisdiction to entertain and determine the impugned reference.
76. Similarly, in the absence of Jurisdiction, a court of law is called upon to exercise restraint and in particular to down her tools at the very earliest. Suffice it to point out that any proceedings taken and consequential orders made by a court without Jurisdiction are a nullity ab initio.
77. In this respect, the ratio decidendi in the case of Phoenix of E.A. Assurance Company Limited v Simeon Muruchi Thiga t/a Newspaper Service [2019] eKLR, is succinct and apt.
78. For ease of refence, the Court of Appeal held as hereunder;
 1. At the heart of this appeal is the issue of jurisdiction. It is a truism jurisdiction is everything and is what gives a court or a tribunal the power, authority and legitimacy to entertain any matter before it. What is jurisdiction?
 2. In common English parlance, ‘Jurisdiction’ denotes the authority or power to hear and determine judicial disputes, or to even take cognizance of the same. This definition clearly shows that before a court can be seized of a matter, it must satisfy itself that it has authority to hear it and make a determination. If a court therefore proceeds to hear a dispute without jurisdiction, then the result will be nullity ab initio and any determination made by such court will be amenable to being set aside ex debito justitiae. It is for this reason that this Court has to deal with this appeal first as the result directly impacts Civil Appeal No.6 of 2018 which is related to this one. We shall advert to this issue later. In the meantime, it is important to put this appeal in context.
79. Premised on the foregoing, where the Honourable court is divested and deprived of Jurisdiction, the honourable thing to do is to strike out the impugned proceedings and down the tools.
80. To this end, the holding in the case of Owners Of The Motor Vessel Lillian ‘S’ Versus. Caltex Kenya Ltd [1989] KLR 1, is relevant and appropriate.
81. For coherence, the court stated and observed as hereunder;

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before



I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority;

‘By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist, where a court takes it upon itself to exercise a jurisdiction which it does not possess, its acquired before judgment is given.’

82. In a nutshell, I come to the conclusion that in the absence of the requisite Notice of objection to taxation, which vests and confers Jurisdiction on this Honourable court, this Honourable court is devoid and bereft of jurisdiction to entertain and adjudicate upon the impugned Reference.
83. Consequently and in the premises, there is no basis upon which this court can venture to and interrogate whether the learned taxing officer applied the correct principle and took into account the relevant factors, in arriving at the Instruction fees.

Final Disposition

84. Having analyzed salient and pertinent issues that were highlighted at the foot of the Ruling herein, it is now appropriate to bring the ruling into a close and to make the final pronouncement, pertaining to and concerning the competence of the impugned Reference.
85. In my humble view, the Reference beforehand was mounted in complete and flagrant disregard of the relevant and applicable provisions of the law. Consequently, the impugned Reference is fundamentally defective, incompetent and stillborn.
86. In a nutshell, the Reference dated the 24th May 2022, be and is hereby Struck with Costs to the Respondent. For clarity, the costs shall be agreed upon and in default, same to be taxed and certified by the taxing officer of the court.
87. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16th DAY OF MARCH 2023.

OGUTTU MBOYA

JUDGE

