



**Chesang v Moi & another (Miscellaneous Application E052 of 2022)  
[2023] KEELC 16948 (KLR) (24 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16948 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
MISCELLANEOUS APPLICATION E052 OF 2022  
JM ONYANGO, J  
APRIL 24, 2023  
IN THE MATTER OF THE ADVOCATES ACT  
AND  
IN THE MATTER OF PARTY AND PARTY BILL OF COSTS  
AND  
IN THE MATTER OF THE REFERENCE ARISING FROM THE RULING OF THE TAXING  
OFFICER OF THE ENVIRONMENT AND LAND COURT AT ELDORET  
BETWEEN  
EMILY CHESANG ..... APPLICANT  
AND  
BARBARA CHEBET MOI ..... RESPONDENT  
AND  
DISTRICT LAND REGISTRAR KOIBATEK ..... INTERESTED PARTY**

**RULING**

1. The Applicant filed this application dated October 22, 2022 seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That the Honourable Court be pleased to stay the execution of the Certificate of costs issued in the ruling dated September 30, 2022 pending the hearing and determination of this reference.



- d. That this Honourable court be pleased to review and/or set aside the ruling of the Taxing Officer and all other items allowed by the Taxing Master.
  - e. That this Honourable Court be pleased to set off the developments on the land against the net costs of the suit.
  - f. That the costs of this Reference be awarded to the Applicant to this Applicant (sic).
2. The application is based on the grounds that the award of item 1 is invalid as the value of the parcel of land has not been ascertain and that the other items in the Bill of Costs have not been proven. The application is also based on the Applicant's Supporting Affidavit sworn on October 12, 2022 in which she avers that at the time of filing this Reference, she had not received a copy of the ruling detailing the findings of the taxing master. She contends that she is dissatisfied with costs of Kshs 733,642 as taxed by the taxing master. In particular she objects to item 1 of the Bill of Costs as the matter was being handled by a Resident Magistrate whose pecuniary jurisdiction was Kshs 7,000,000. She is of the view that the estimated value of the subject matter is Kshs 4,000,000. She adds that there are developments on the suit property estimated at Kshs 664,000 and prays that the same be set off against the Respondent's Bill of Costs.
  3. The Respondent opposed the application through her Replying Affidavit sworn on November 1, 2022. She depones that the application is incompetent as it was filed as a Miscellaneous Application instead of being filed in the parent file which is ELC Appeal No 44 of 2019.
  4. The Respondent faults the Applicant for seeking a review and/or setting aside of a decision without annexing the said ruling and certificate of costs to her Supporting Affidavit. It is her contention that Bill of Costs was in respect of ELC Appeal No 44 of 2019 where the court dismissed the Appeal with costs to the Respondent. That she had filed a bill of Kshs 3,223,156/= but the same was taxed at Kshs 733,642 meaning that the sum of Kshs 2,489,514/= had been taxed off. She justified the bill as it had been drawn under schedule 6 of the *Advocates Remuneration (Amendment) Order, 2014* under which the taxing master may increase the basic instruction fees thereunder by taking into account whether the matter was opposed, its complexity, novelty of the questions raised and the value of the subject matter as well as the time expended by the advocate.
  5. It was her contention that the costs as taxed by the taxing master were fair as the suit property was a prime piece of land whose estimated value is Kshs 18,000,000 and the matter was fairly complex as the Plaintiff had applied for an order of eviction and the Defendant mounted a Counterclaim based on Adverse possession and the case took 3 years to prosecute.
  6. The Respondent opposed the applicant's proposal of a set off as she was of the view that the value placed on the developments was not supported by a valuation report and in any event she was not interested in the said developments.
  7. The parties opted to rely on the affidavits filed without filing any written submissions.
  8. Having considered the application, rival submissions and the relevant law, the following issues arise for determination:
    - i. Whether the application is premature and incompetent
    - ii. Whether the orders sought should be granted.



Rule 11 of the Advocates Remuneration Order provides 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
9. In her Supporting Affidavit, the applicant stated that at the time of filing this reference, she had not received a copy of the reasoned ruling detailing the findings of the taxing master. Indeed, no copy of the ruling was annexed to her Supporting Affidavit. In his Replying Affidavit, the Respondent contended that there was nothing to review as the court had not been furnished with a copy the ruling of the taxing master or the Certificate of costs. Granted that this application was filed as a Miscellaneous application and not an application in the parent file, it was incumbent upon the Applicant to annex a copy of the ruling she seeks to set aside. Without the said ruling, this court is incapacitated, as it is not possible to ascertain what factors the taxing master took into account in taxing the Bill in order to determine whether his decision was based on an error of principle.

In *Republic vs Ministry of Agriculture & 2 others Ex parte Muchiri W'njuguna & 6 Others* (2006)eKLR Ojwang, J (as he then was) expressed himself as follows:-

“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A Court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.... The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an interference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. Needless to state not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the taxing officer



discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment... A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved...”

10. As the applicant’s main compliant relates to the instruction fees, I am unable to determine what factors the taxing master took into account in arriving at the taxed amount, without his ruling. In view of the foregoing, it is my finding the application is premature and incompetent and it can only suffer one fate, dismissal.
11. Having arrived at the finding that the application is incompetent, it follows that the prayers sought cannot be granted.
12. The upshot is that the application is devoid of merit and the same is hereby dismissed with costs to the Respondent.

#### CONCUSIONS

**Dated, signed and delivered virtually this 24<sup>th</sup> day of April 2022**

**J M ONYANGO**

**JUDGE**

**In the presence of :**

**Miss Moraa for Mr Martim for the Applicant**

**Mr Okiro for the Respondent**

**Court Assistant: A. Oniala**

