



**Kitonyi v EK Mutua & Co Advocates (Miscellaneous Civil Application
560 of 2019) [2023] KEHC 24150 (KLR) (Civ) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION 560 OF 2019

JN MULWA, J

OCTOBER 26, 2023

IN THE MATTER OF THE ADVOCATES ACT

AND THE ADVOCATED BILL OF COSTS

BETWEEN

REUBEN NGILA KITONYI CLIENT

AND

EK MUTUA & CO ADVOCATES ADVOCATE

RULING

1. Before the Court is a Chamber Summons Motion dated 8/9/2021 brought by the Client Reuben Ngila Kitonyi in which he seeks orders to set aside the Deputy Registrar's (Taxing Officer) decision on the Advocate-Client Bill of Costs dated 4/10/2019 taxed on the 8/5/2020.
2. The Applicant being dissatisfied with the taxed costs in the sum of Kshs. 374,683/- he filed this Chamber Summons motion seeking an order to set aside the Taxing Officer's decision and the Certificate of Costs, as well as re-taxation of several items; and in the alternative, that the Bill of Costs dated 9/10/2019 be remitted for taxation to a different taxing officer. He also prays for costs of this application.

The grounds for the Chamber Summons are that the Taxing Officer's decision and amount of Kshs. 374,683 was unreasonably low and faults the said officer for not allowing a sum of Kshs. 724,685.50. He swore the Supporting Affidavit on 8/9/2021.
3. In response to the motion, the Respondent Advocate filed a Replying Affidavit on the 14/7/2022 in which he raised several legal issues among them: that the application is incompetent for having been filed more than 16 months after the impugned Taxing officer's decision without leave of Court, and



further that the applicant failed to show by his application in what manner the Taxing Officer failed to Judicially exercise her discretion.

4. I have also noted that the applicant has filed submissions on the Bill of Costs dated 9/9/2019, for whatever reasons as that matter of the taxation is not before this Court, the same having been before the Taxing Officer; and therefore not available for this Court's Consideration.
5. On the substantive application, there is no dispute that the reference was filed out of time, by over 16 months.

Paragraph 11 of the Advocates Remuneration Order provides that:

1. objects 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 reason for his taxation on those items and the objector may within fourteen days from the receipt of the reason apply to a Judge by Chamber Summons, which shall be served on all 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 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) of Subparagraph (2) for taking any step, application for such an order may be made by Chamber Summons.
6. In his application under consideration, the Applicant did not seek leave of Court to file the objection proceedings under paragraph 11 as provided above.

In the circumstances this Court finds the Chamber Summons dated 8/9/2021 to be incompetent. It is struck out with costs.

Orders accordingly.

DATED, DELIVERED AND SIGNED IN NAIROBI THIS 26TH DAY OF OCTOBER 2023.

JANET MULWA

JUDGE

