



**Murrunka & another v Maki (Environment and Land Appeal
E004 of 2022) [2023] KEELC 16853 (KLR) (17 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16853 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E004 OF 2022**

EM WASHE, J

APRIL 17, 2023

BETWEEN

JOSEPH MBATIAN MURRUNKA 1ST APPELLANT

JANET TUYUNI YIAMBOI 2ND APPELLANT

AND

JOSEPH LK MAKI RESPONDENT

RULING

1. The 1st and 2nd Appellants (hereinafter referred to as “the Applicants”) filed a Chamber Summons Application dated 30th November 2022 (hereinafter referred to as “the present application”) seeking for the following Orders; -
 - i. Pending the hearing and determination of the instant chamber summons application, the Honourable Court be pleased to extend time for the appellants/applicants to file a Reference to this Honourable Court against the decision of the Trial Magistrate in respect of the bills of costs dated 28th day of July 2022.
 - ii. The Honourable Court be pleased to issue an order of interim stay of execution of the Trial Magistrate in respect of the bill of costs dated 28th of July 2020 and its consequential orders pending the hearing and determination of the instant Reference.
 - iii. The Honourable Court be pleased to review, revise and/or vary the decision of the Honourable Magistrate rendered and/or delivered on the 10th day of September 2020.
 - iv. The Honourable Court be pleased to review, revise and/or rescind the amount of costs vide decision of the assessment master and/or Honourable Magistrate delivered on the 10th day of September 2020.



- v. The Honourable Court be pleased to award onto the Respondent such costs as accords with the Advocates (Remuneration) Amendment Order.
 - vi. Consequent to prayer(s) hereinabove being granted, the Honourable Court be pleased to substitute the Certificate of Costs issued pursuant to the decision of the Honourable taxing master with a new certificate of costs reflecting the correct costs payable unto the Respondent.
 - vii. Costs of this Reference be borne by the Respondent.
2. The Applicants main grounds in support of the prayers outlined hereinabove can be summarised as follows; -
 - a. The Respondent herein filed a Bill of Costs dated 28th day of July 2020 and presented the same for taxation before the Taxing Master.
 - b. The determination from the Taxing Master was that the entire Bill of Costs dated 28th July 2020 had been taxed as drawn.
 - c. The Applicants herein submit that the Taxing Master did not scrutinise the different items in the Bill of Costs dated 28th July 2020 and thereby arrived at a wrong decision.
 - d. The Applicants state that the Bill of Costs dated 28th July 2020 was exaggerated and had erroneous figures contrary to the provisions of the Advocates Remuneration Order.
 - e. Consequently, the Taxing Master failed misconceived the applicable taxing principles and Certificate of Costs issued thereafter should be revised.
 3. The present Application is supported by the Affidavit of the 1st Applicant sworn on the 30th November 2022 which also enclosed the Bill of Costs dated 28th July 2020 and the Certificate of Costs dated 30th September 2020.
 4. The present Application was served on the Respondent who opposed the same by filing a Replying Affidavit sworn on the 30th of December 2022.
 5. The Respondent's grounds of opposition as contained in the Replying Affidavit dated 30th December 2022 can be outlined as follows; -
 - a. First and foremost, the Respondent stated that the decision of the Taxing Master pronounced on the 10th September 2020 was lawful and in compliance with the law.
 - b. The Respondent further stated this Application had been filed after an inordinate delay of over 2 years as opposed to the period of 14 days provided by the law in objecting to a decision of a Taxing Master.
 - c. The Respondent submitted that the present Application was an abuse of the court process and made in bad faith.
 - d. The Respondent stated that the numerous applications including the present one is geared towards denying the fruits of his judgement.
 - e. The Respondent also pointed out to the Court that the Applicants had not deposited any deposit as security as required by law.
 6. The Honourable Court directed that the application to be canvassed by way of written submissions.



7. The Applicants then filed their submissions on the 20th of February 2023 while the Respondent filed his submissions on 14th February 2023.

8. The Honourable Court has gone through the present Application, the Replying Affidavit and the submissions by the parties herein and identify the following issues for determination.

Issue No. 1- Whether or not the applicants should be granted leave to file their reference against the decision of the taxing master dated 10th September 2020.

Issue No.2- Whether or not the bill of costs dated 28th July 2020 and the certificate of costs dated 30th september 2020 be reviewed, rescinded and/or re-taxed?

Issue No.3- Who Bears the costs of the Present Application?

9. The Honourable Court having identified the issues mentioned hereinabove, it will now proceed to evaluate the same and make its determination.

Issue No. 1- Whether or not the applicants should be granted leave to file their reference against the decision of the taxing master dated 10th September 2020.

10. The first prayer in the present Application is seeking for leave of the Court to file a Reference against the decision of the Taxing Master pronounced on the 10th of September 2020.

11. According to the pleadings and documents presented in this application, the Bill of Cost taxed was dated 28th July 2020.

12. The Taxing Master on the other hand pronounced his/her decision on the 30th September 2020 and a Certificate of Costs issued on the same date.

13. Paragraph 11 of the Advocates (Remuneration) Order which provides that: -

(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.

14. Based on the above facts and the provisions of Paragraph 11 of the Advocates (Remuneration) Order, it is no doubt that the period provided in law for the filing of an Objection and/or Reference has since lapsed.

15. However, in the case of In *Nyakundi & Company Advocates –vs- Kenyatta National Hospital Board* [2005] eKLR the Court held that: -

“Under Rule 11 (2) of the *Advocates (Remuneration) Order* quoted above, a definite time frame for filing a reference is given. It is fourteen (14) days from the receipt of the reasons. If an Objector is delayed in making his/her reference he/she may apply for enlargement of time to make the reference under Rule 11(4) of the same Order.”



16. Being guided by the above decision, it is possible for an Objector to seek leave to file a Reference and/or Objection to the decision of a Taxing Master even after the lapse of 14 days as provided under Paragraph 11 of the Advocates (Remuneration) Order.
17. However, the discretion to extend time for filing any pleading in law must be exercised upon having a satisfactory reason to do so.
18. In this instant case, the Applicants herein have not provided any reasons explaining the delay in filing the Reference and/or Objection against the decision of the Taxing Master dated 30th September 2020.
19. Nevertheless, the Applicants made claims that the Taxing Master applied the wrong principles during the taxation process thereby awarding exaggerated and erroneous costs.
20. Further to that, the Applicants have also claimed that the Taxing Master did not scrutinize the items in the Bill of Costs and simply ruled the same to be taxed as drawn without giving any reasons of drawing such a conclusion.
21. It is a result of this omissions that the Applicants are seeking to have the Bill of Costs reviewed and/or re-taxed through a Reference.
22. The intention of Paragraph 11 of the Advocate (Remuneration) Order is to give an opportunity to an aggrieved party to appeal against the decision of the Taxing Master.
23. This right to appeal is provided and guaranteed under Article 50 of the Kenyan Constitution, 2010 and should always be adhered to so that justice can be seen to be done.
24. In conclusion therefore, the Court is inclined to allow the Applicants a chance to raise their grievances on the taxation of the Bill of Costs purely for purposes of allowing them enjoy the right of Appeal as envisaged in our Constitution.

Issue No.2- Whether or not the Bill of costs dated 28th July 2020 and the Certificate Of Costs Dated 30th September 2020 Be Reviewed, Rescinded And/or Re-taxed?

25. On this issue, the Court will not make any determinations as the substantive Reference has not been filed and the reasons and/or principles applied therein by the Taxing Master availed for the Court's review and/or re-consideration.

Issue No.3- Who Bears the Costs of the Present Application?

26. The Costs of this Application shall abide the outcome of the substantive Reference filed herein.

Conclusions

27. In conclusion therefore, the Court hereby makes the following Orders as appertains the Application dated 30th September 2022.
 - a. The applicants be and are hereby granted leave of 14 days from today's date to prepare, file & serve their reference accompanied by the reasons and/or grounds applied by the taxing master in arriving at the taxed figure.
 - b. The orders issued on the 21st of september 2022 shall continue to subsist until the determination of the reference to be filed by the applicants.
 - c. In the event of default of order a, prayer b will automatically lapse and stand discharged thereof.



d. Costs to follow the outcome of the reference.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 17TH APRIL, 2023.

EMMANUE L.M. WASHE

JUDGE

IN THE PRESENCE OF:

Court Assistant: Ngeno/mempe

Advocate for the Applicant: Ochwangi for (N/A)

Advocate for the Respondents: Nyambati

