Chauri v District Land Adjudication Officer, Tigania West/East District & 2 others (Environment and Land Appeal 114 of 2019) [2025] KEELC 3286 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3286 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL 114 OF 2019

JO MBOYA, J

MARCH 20, 2025

BETWEEN

ELIJAH M'MAITAI CHAURI .... OBJECTOR

AND

DISTRICT LAND ADJUDICATION OFFICER, TIGANIA WEST/EAST DISTRICT .... 1ST RESPONDENT

ATTORNEY GENERAL .... 2ND RESPONDENT

GEORGE IRIMBA THIRUAINE .... 3RD RESPONDENT

(An Appeal against the Ruling and order of Hon. G. Sogomo dated 29th August, 2019 in the Principal Magistrate's Court at Tigania -ELC Cause No. 51 of 2017 (Tigania))

RULING

1. Vide the Chamber Summons Application [Reference] dated the 13th January 2025, the Appellant/Applicant has approached the court under Rule 11 of the Advocates Remuneration Order, Section 1(A), 1(B),3(A), Section 79 (G) of the *Civil Procedure Act* and Order 21 Rule 9A of the Civil Procedure (Amendment) Rules, 2020 (Legal Notice 22) and in respect of which same has sought the following reliefs;

    i. That this Honourable Court be pleased to certify this application urgent.

    ii. That this Honourable Court be pleased to stay execution for costs arising from the ruling on taxation by Hon. E. W. Ndegwa, Deputy Registrar on 10th December, 2024, with respect to items 1 and 2 in the Bill of Costs, pending the hearing and determination of this Reference.

    iii. That the decision of the Taxing Officer, Hon. E. W. Ndegwa, Deputy Registrar on 10th December, 2024, with respect to items 1 and 2 in the Bill of Costs, be set aside and taxed afresh.

iv. That in the alternative, this Honourable Court be pleased to order that the Respondent's Bill of Costs with respect to items 1 and 2 be taxed afresh by another taxing officer

v. That this Honourable Court be pleased to give orders or directions hereto that it may deem fit to give hereof.

vi. That the costs of this Application be in the cause

2. The Chamber Summons/Reference is anchored on various grounds which have been enumerated in the body thereof. Furthermore, the application is supported by the affidavit of Henry Kurauka, Advocate sworn on even date, namely; the 13th January 2025 and to which the deponent has annexed one [1] document.

3. The 1st and 2nd Respondents were duly served with the application beforehand. Nevertheless, the 1st and 2nd Respondents did not file any response thereto or at all. In any event, learned counsel for the 1st and 2nd Respondents intimated to the court that same [1st and 2nd Respondents] shall not be opposing the application.

4. The 3rd Respondent was similarly served. Same [3rd Respondent] also failed to file any response to the application.

5. The instant application came up for hearing on the 4th February 2025; whereupon the advocates for the Applicant and the 1st and 2nd Respondents agreed to canvass and dispose of the application by way of written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of written submissions.

6. The matter came up for mention on the 10th March 2025; with a view to confirming whether the parties had filed their written submissions. Suffice it to state that the Appellant/Applicant confirmed having filed written submissions. Nevertheless, the 1st and 2nd Respondent posited that same were not filing any submissions in opposition to the application beforehand.

7. Having read the Chamber Summons application [Reference] and the supporting affidavit thereto and upon taking into consideration the submissions by the Appellant/Applicant, as well as the applicable law, I come to the conclusion that the determination of the instant application turns on two [2] salient issues.

8. The issues are namely;

i. Whether the application is competent or legally tenable or otherwise

ii. Whether the Applicant has established a basis to warrant interference with the certificate of taxation by the taxing officer or otherwise.

9. Regarding the first issue, namely, whether the reference beforehand is competent and legally tenable, it is imperative to underscore that any person, the Applicant not excepted, who is aggrieved by the certificate of taxation is obligated to lodge and serve a notice of objection to taxation intimating the items of the bill which are sought to be impugned and/or objected to.

10. Moreover, it is common ground that the notice of objection to taxation highlighting the impugned items, must be lodged [filed] within 14 days from the date of the ruling and the certificate of taxation sought to be challenged and/or objected to.

11. Suffice it to state that the manner of crafting the notice of objection to taxation and the timelines for lodgement of same are underpinned by the provisions of Rule 11[1] of the Advocates Remuneration Order [ARO].

12. Given the importance of the provisions of Rule 11 of ARO, it is imperative that same be reproduced. For ease of appreciation, the provisions of ARO [supra] 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.
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> (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."

13. With the foregoing in mind, it is now apposite to revert to the subject matter and to discern whether the Appellant/Applicant has complied with the peremptory ingredients highlighted in terms of Rule 11[1] of the ARO [supra].

14. It is important to state that the ruling on taxation and the consequential certificate of taxation sought to be challenged was rendered on the 10th December 2024. In this regard, the notice of objection to taxation, if any ought to have been lodged and served within 14 days from the date of delivery of the impugned ruling.

15. Nevertheless, it is imperative to state that the period between the 21st day of December 2024 to the 13th January of the year following are exempted from computation of time. [See the provisions of Order 50 Rules 1, 2 and 3 of the Civil Procedure Rules].

16. Based on the foregoing, it is evident that the total duration of time available in December 2014; worked to only 10 days. In this regard, the remainder 4 days for lodgement of the notice of objection to taxation would be computed w.e.f 14th January 2025.

17. Arising from the foregoing, there is no gainsaying that the Notice of Objection to taxation dated the 13th January 2025; was duly lodged and served within the prescribed statutory timelines.

18. Next is the question as to whether the notice of objection to taxation has enumerated or highlighted the items of taxation that are sought to be challenged and/or objected to. Pertinently, it is peremptory upon the Applicant to advert to and enumerate the items of the bill of costs [taxation] sought to be impugned.

19. Nevertheless, it is evident that the notice of objection to taxation dated the 13th January 2025 does not advert to and or highlight the items of taxation sought to be objected to and/or challenged vide the intended reference. In the absence of the items of taxation sought to be objected to, there is no gainsaying that the notice of objection to taxation is invalid.

20. Moreover, it is not lost on this court that where the notice of objection to taxation is invalid for non-compliance with the provisions of Rule 11[1] of the ARO then the intended reference or better still, the reference [if any] filed is deficient, incompetent and thus invalid.

21. To this end, it is appropriate to adopt and reiterate the holding in the Court of Appeal in the case of Machira & Co. Advocates v Arthur K. Magugu & another [2012] KECA 245 (KLR), where the court stated 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.
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> 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.

22. Arising from the dicta in the case of Machira [supra], there is no gainsaying that [sic] the reference dated the 13th January 2025 is incompetent, invalid and stillborn.

23. The third perspective that also renders the reference incompetent and legally untenable relates to the timing of the reference. To start with, a reference can only be filed upon receipt of the reasons for taxation which must be availed by the taxing officer. [See Rule 11[1] of the ARO].

24. Nevertheless, in respect of the instant matter, it is worth recalling that the Applicant herein lodged the notice of objection to taxation dated the 13th January 2025 and a letter bespeaking the reasons for taxation of even date. However, before the reasons for taxation could be availed, the Applicant proceeded to and filed the reference on the same date, namely; the 13th January 2025.

25. From the foregoing, what becomes apparent is that the reference beforehand has been filed prematurely and before the reasons for taxation which were sought for could be availed and/ or supplied to the Applicant.

26. The question that does arise is whether a reference, [which is like an appeal] can be lodged and prosecuted in the absence of reasons underpinning the decision/ruling. In my humble view, the reference can only be sustained upon the provisions of the reasons for taxation and not otherwise.

27. Flowing from the foregoing analysis, the reference beforehand is not only premature and misconceived but same is legally untenable. In this regard, the entirety of the reference beforehand does not suffice.

28. Respecting the second issue, namely; whether the Appellant/Applicant has established a basis to warrant the interference with [sic] items 1 and 2 at the foot of the certificate of taxation, it is worthy to reiterate that the Applicant herein needed to procure reasons from the taxing officer as pertains to the taxation of item 1 [instructions fees].

29. It is upon obtaining the reasons on taxation of item 1 [instructions fees] that the Applicant would discern whether the reasons proffered [if any] vindicate the exercise of discretion by the taxing officer or otherwise.

30. Additionally, it is the reasons [if any], provided that would have shown whether the taxing officer exercised his/her judicial mind objectively, reasonably, judiciously and taking into account the guiding principles that have been espoused in various cases including Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & others (No 3) [1972] EA 162; Joreth v Kigano [2002]eKLR and Peter Muthoka v Ochieng & 3 Others [2018]eKLR, respectively.

31. Barring the provisions of reasons, it is impracticable, nay impossible for the Applicant and by extension this court to interrogate the manner in which the discretion was exercised. In this regard, a critical ingredient is missing and the court is thus incapacitated.

32. Secondly, even though the Applicant has also sought to impugn the taxation as pertains to item 2, it is evident that the learned taxing officer did not make any award on account on item 2.

33. For coherence, the learned taxing officer stated thus;

> " Item 2 is declined. The appeal was not certified as a proper one for a consideration for getting up fees".

34. My reading of the position taken by the learned taxing officer is to the effect that there was no award in respect of item 2 of the bill of costs, capable of being objected to. In this regard, the reference attacking item 2 is fanciful and hollow.

35. Lastly, even if, the Applicant had procured the reasons for taxation and placed same before this court, [which is not the case], it is worthy to underscore that the judge is not at liberty to interfere with the certificate of taxation unless certain parameters are met and/or established. [See the decision of the Court of Appeal in the case of Kipkorir,Titoo & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR]. [See also First American Bank of Kenya Ltd v Gulab P. Shah & 2 others [2002] eKLR].

36. Before departing from this issue, it is also apposite to state that a judge is also called upon to defer to the taxing office and more particularly on question pertaining to quantum. Instructively, it is the taxing officers who are clothed with the technical expertise, know-how and knowledge in matters touching on taxation. [See Outa vs. Odoyo & 3 Others, SC Petition No 6 of 2014; [2023] KESC 75 (KLR)].

Final Disposition:

37. Flowing from the analysis, which has been highlighted in the preceding paragraphs, it must have become crystal clear that the chamber summons application [reference] is premature and misconceived.

38. Inevitably, I come to the conclusion that the application beforehand is a candidate for dismissal. Consequently, the final orders of the court are as hereunder;

i. The Application/Reference dated the January 13, 2025; be and is hereby dismissed.

ii. Each party shall bear own costs of this Application.

39. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 20TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of .

Mr. Mutuma – Court Assistant

Mr. Kurauka for the Appellant/Applicant.

Ms. Miranda Litigation counsel for the 1st and 2nd Respondents.

N/A for the 3rd Respondent.