



**Muri Mwaniki & Wamiti Advocates v Mutilangi (Miscellaneous Application  
64 of 2017) [2023] KEELC 17844 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17844 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 64 OF 2017**

**BM EBOSO, J**

**MAY 25, 2023**

**BETWEEN**

**MURI MWANIKI & WAMITI ADVOCATES ..... APPLICANT**

**AND**

**ALFRED MULWA MUTILANGI ..... RESPONDENT**

**RULING**

**Background**

1. On or about September 22, 2017, the Law Firm of Muri Mwaniki & Wamiti Advocates presented to this court an advocate/client bill of costs dated September 19, 2017 drawn against Mr Alfred Mulwa Mutilangi and invited the taxing officer of this court to tax the bill under the *Advocates (Remuneration) Order 1962*. The bill of costs was subsequently prosecuted through written submissions and the court was invited to render a determination on it. In a subsequent ruling rendered on 22/10/2019, the taxing officer of the court, Hon V Kachuodho, dismissed the bill of costs without taxing it, on the ground that there was no client/ advocate relationship between the two parties, hence she [the taxing officer] had no basis upon which to tax the bill against the respondent.
2. The taxing officer rendered herself thus:

“From the foregoing it’s quite apparent that the

applicant herein received instructions from Eco Bank Kenya, and not the respondent herein, and the work consequently billed was done for and on behalf of Eco Bank Kenya. I further find there was no evidence either written or by conduct to indicate that the applicant received instructions from the respondent. There is therefore no evidence of work done by the applicant on instructions from the respondent.



The upshot of the above is that the Deputy Registrar as the taxing master herein lacks the basis upon which to tax the bill of costs which is hereby dismissed.”

### Reference

3. The above ruling triggered a reference by way of chamber summons application by the applicant, dated March 2, 2022, in which the applicant urged this court to set aside the ruling of the taxing officer and tax the bill of costs or remit back the bill of costs to the taxing officer to tax it.
4. A perusal of the court receipt and this court’s receiving rubber stamp reveals that the chamber summons application was filed on March 15, 2022. Mr Martin G Mwaniki deposed in paragraph 4 of the supporting affidavit that the applicant received certified copies of the ruling and reasons therefore on February 24, 2022.
5. The said application dated March 2, 2022 is what falls for determination in this ruling. It was canvassed through the applicant’s written submissions dated October 21, 2022. The respondent opposed the application through a replying affidavit sworn on October 21, 2022 by Gerald Andego Magani and written submissions dated November 7, 2022, filed by M/s Dola Magani & Co Advocates.

### Applicant’s Case

6. The thrust of the applicant’s case is that, to the extent that the respondent was the beneficiary of the work undertaken by the applicant towards perfection of the loan security, he is liable to pay the applicant’s costs, hence he is the applicant’s client as contemplated under Section 2 of the Advocates Act.

### Respondent’s Case

7. The gist of the respondent’s case is that, first a reference does not lie against the order which the taxing officer made declining to tax the bill of costs on the ground that she lacked jurisdiction on the ground of misjoinder. The position of the respondent is that the applicant should have filed a substantive appeal against the decision of the taxing officer. The second aspect of the respondent’s case is that the reference is time-barred in that it was brought outside the limitation period of 14 days that is stipulated under the law. The respondent urges the court to dismiss the application.

### Analysis and Determination

8. I have considered the application, the response to the application and the parties’ respective submissions. I have also considered the relevant legal frameworks and the prevailing jurisprudence relevant to the issues that fall for determination in the application.
9. Taking into account the grounds upon which the application is premised, the response to the application, and the parties’ respective submissions on the application, the following are the three key issues that fall for determination in this ruling: (i) Whether the present reference was brought outside the prescribed limitation period and if so, whether it is fatally defective; (ii) Whether a reference lies to this court under paragraph 11 of the Advocates (Remuneration) Order 1962 on the taxing officer’s finding on a question of retainer; and (iii) Whether there was retainer between the applicant and the respondent. I will make brief pronouncements on the three issues in the above sequence.
10. The impugned ruling was rendered on October 22, 2019. The present reference was filed on March 15, 2022. This is a period of more than two years and four months [28 months]. Explaining the delay, Mr Martin G Mwaniki deposed at paragraphs 3 and 4 of the supporting affidavit that they requested



for reasons for the ruling of the taxing officer and the said reasons were received by them on February 24, 2022.

11. A perusal of the official court rubber stamp on the application together with the official court receipt relating to the application reveals that the application was received by the Court Registry on March 15, 2022. This was a period of 18 days from the date when the reasons were received by the applicant. The application was expressed as having been brought under paragraph 11(1) and (2) of the *Advocates (Remuneration) Order*.
12. Under paragraph 11(1) of the *Advocates (Remuneration) Order 1962*, an aggrieved party is required to initiate a reference against the impugned decision of the taxing officer within 14 days. If time is reckoned from the date of the impugned decision [October 22, 2019], the 14 days limitation period for lodging a reference under Paragraph 11(1) started running on October 23, 2019 and lapsed on 5/11/2019. If time is reckoned from the date when the applicant received the reasons (February 24, 2022), the 14 days limitation period started running on February 25, 2022 and lapsed on March 10, 2022.
13. The reference under consideration was brought on March 15, 2022. Whichever way one reckons time, this was clearly outside the 14 days limitation period. There is no evidence of any order enlarging the time for bringing the reference. It is therefore clear that the reference was brought outside the prescribed limitation period. For this reason, the fate of the reference is that it is fatally defective and cannot stand.
14. The second issue is whether a reference lies to this court under paragraph 11 of the *Advocates (Remuneration) Order 1962* on a taxing officer's decision on a question relating to retainer. The respondent contended that the issues raised by the taxing officer were substantive issues relating to misjoinder of parties, hence the issues should be dealt with "in an appeal and not in such application." I do not agree with that view. The bill of costs was a matter that was before the Environment and Land Court. The taxing officer exercised jurisdiction as a taxing officer of the same court. There is no provision in the law for an appeal to either a Judge of this Court or to the Court of Appeal against a decision of the taxing officer, be it a decision that relates to an item in the bill of costs or one that relates to the question of retainer. The only mechanism available to an aggrieved party is a reference under paragraph 11 of the *Advocates (Remuneration) Order 1962*. Without saying much, I do not think the respondent's position on this issue has any legal or logical basis. My finding on the issue is that a reference lies to a judge of this court under paragraph 11 of the *Advocates (Remuneration) Order 1962* on the taxing officer's decision on the question of retainer.
15. The last issue is whether there was a retainer between the applicant and the respondent. The applicant faulted the taxing officer for finding that there was no retainer hence there was no basis upon which to tax the applicant's bill of costs against the respondent. The applicant contended that there was implied retainer. The applicant placed before the taxing officer copies of: (i) letter dated August 23, 2010 from Eco Bank to them; (ii) letter of offer dated July 2, 2010 from Eco Bank to the respondent; (iii) power of attorney executed by the respondent in favour of Paul Ndunda Mutiso; (iv) correspondent between them and Eco Bank; and (v) the registered charge. None of the above documents contained an agreement of retainer between the parties to this reference. It is clear from the above documents that the applicant's client was the instructing bank.



16. Clause 1 of the terms and conditions in the letter of offer dated July 2, 2010 contained the following clause on all legal charges relating to the perfection of the security:

“ All legal charges including Advocates fees, valuation, stamp duties or other fees, costs and expenses incurred by the Bank in connection with administration of the facility herein, perfection of securities with respect to the facility herein and any proceedings for recovery shall be borne by the Borrower. The services shall be rendered by the Bank’s approved service providers and the fees shall be recovered by debiting the Borrower’s Account.”

17. From the above clause, it does emerge that the Bank was required to settle the applicant’s costs relating to the perfection of the security and proceed to debit the respondent’s account. It was never contemplated that there would be a client/advocate relationship between the applicant at the respondent capable of attracting a bill of costs.

18. Having examined the materials that were placed before the taxing officer, it is clear that at all material times the applicant was retained by the bank. There was no retainer between the applicant and the respondent.

19. Further having found that the present reference was brought outside the limitation period, and that there was no retainer between the applicant and the respondent, the reference fails and is hereby dismissed.

20. Given that the respondent did not disclose whether he credited his Bank Account in terms of his contractual obligations with the Bank, parties to this reference will bear their respective costs of the reference.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF MAY 2023**

**B M EBOSO**

**JUDGE**

Court Assistant: Hinga/Osodo

