



**Agimba and Associates Advocates v Michuki (Miscellaneous Application  
199 of 2019) [2022] KEHC 15720 (KLR) (Family) (28 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15720 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION 199 OF 2019  
AO MUCHELULE, J  
NOVEMBER 28, 2022**

**BETWEEN**

**AGIMBA AND ASSOCIATES ADVOCATES ..... APPLICANT**

**AND**

**WANJA YVONNE MICHUKI ..... RESPONDENT**

**RULING**

1. The applicant Agimba and Associates Advocates were acting for the respondent Wanja Yvonne Michuki in High Court Succession Cause No 2770 of 2018 In the Matter of the Estate of Josephine Watiri Michuki (Deceased). Somewhere along the line, the respondent instructed WG Wambugu & Co Advocates to act for her and a notice of change of advocates was filed. The applicant filed an advocate/ client bill of costs to tax his costs before the Deputy Registrar. The bill was for Kshs 184,080,301/30. It was filed on December 20, 2019.
2. The respondent filed a response through a notice of preliminary objection dated May 18, 2020 whose grounds were that:-
  - ' 1) The bill of costs is an abuse of the due process in that the parties had entered into a fees agreement and hence offends the provisions of the Advocates Act Chapter 16 of the Laws of Kenya.
  - 2) The bill aforesaid is aimed at vexing the respondent and the same calls for striking off.
  - 3) The bill of costs dated does not lie and the same should be struck off with costs.'
3. The respondent followed it with a replying affidavit along the same lines.



4. Following several mentions and adjournments, the bill of costs was heard *ex parte* and a ruling delivered on July 20, 2021 by the Deputy Registrar. The objection was sustained and the bill of costs was struck out.
5. The applicant complains that he was unaware of the hearing date and the ruling until much later after the delivery. He complains about the several letters he wrote to the Deputy Registrar but which elicited no response. He further complains that the Covid – 19 pandemic which disrupted normal court process and the judiciary’s response by having matters heard virtually, a process that was not full proof, did not help in his effort to participate in these proceedings to prosecute the bill of costs and defend the notice of preliminary objection.
6. Nonetheless, he says, by letter dated August 10, 2021 seeking, among other things, the reasons for the ruling. By letter dated September 8, 2021. The Deputy Registrar wrote to say that the reasons were contained in the ruling. The present chamber application was dated September 24, 2021 and sought that the decision of the taxing officer delivered on July 30, 2021 be wholly set aside and that the applicant’s advocate/client bill of costs dated December 18, 2019 be remitted to another taxing officer for hearing and disposal. One of the grounds was that there was no agreement on fees between the parties, and therefore that the taxing officer fell into error by striking out the bill of costs when no such agreement was exhibited. It was stated that all that there was were deposit request notes. It was the applicant’s case that the issue whether or not she was an agreement on fees required evidence, and that this was not a matter that should have been summarily dealt with by way of preliminary objection.
7. The respondent opposed the application through her replying affidavit dated November 16, 2021. Her case was that the applicant had variously been served to attend court but had not attended, leading to the ruling. She stated that the application lacked merit, was bad in law and offended the *Advocates Act*. In the submissions by the respondent’s counsel, it was submitted that the application had been filed out of time and without leave. Guess that is why the replying affidavit swore that the application was bad in law as it offended the *Advocates Act*. The applicant’s submissions in response on the issue of the reference having been filed out of time was as follows:-

‘ On the basis of the above (Paragraph 11 of the Advocates Remuneration Order) it can be clearly seen that the applicant did not file their notice out of time. The ruling of the Deputy Registrar was delivered on July 30, 2021. The applicant went on to give their notice of objection on August 10, 2021. The said 14 days had yet to lapse. The respondent’s assertion is therefore misleading and plainly untrue. In this regard, the applicant need not request for leave to file out of time as they had already filed their notice within the statutory stipulated timelines.’

8. Paragraph 11 of the *Advocates Remuneration Order* provides as follows:-

- (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. It appears that the applicant has wholly misapprehended the respondent's point regarding delay. Her case was that the reference was filed out of time without leave. It was never her case that the notice of objection to the taxation was made out of time. The applicant has therefore not answered the claim that the reference was filed out of time and without leave.
10. Paragraph 11(2) of the Order provides that upon receipt of the summons from the taxing officer he was to file the response within 14 days. The response that the reasons were contained in the ruling was on September 8, 2021. 14 days from that date, the reference ought to have been filed on September 22, 2021. The chamber application was filed on September 24, 2021. That was late, and there was no leave sought or granted.
11. That being the case, I find that the application was dated September 24, 2021. That was late, there was no leave sought or granted.
12. That being the case, I find that the application dated September 24, 2021 is incompetent and misconceived. It is struck out with costs.

**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2022.**

**AO MUCHELULE**

**JUDGE**

