



**Oroltulet v Kukutia (Miscellaneous Application E002 of 2023)
[2023] KEELC 18221 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18221 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION E002 OF 2023**

EM WASHE, J

JUNE 21, 2023

BETWEEN

LEKILASU SHAKUR OROLTULET APPLICANT

AND

OLESANKEY KUKUTIA RESPONDENT

RULING

1. The Application before the Honourable Court is dated February 13, 2023 (hereinafter referred to as “the present application”) seeking for the following Orders; -
 - a. That there be a stay of execution of the Ruling on taxation dated December 15, 2022 certifying costs due to the Applicant from the Respondent as KShs 709,350/- pending the hearing of the Reference.
 - b. That this Reference be deemed to have been duly lodged within the prescribed time.
 - c. That the Reference be heard and determined expeditiously.
 - d. That the taxation ruling dated December 15, 2022 delivered in Kilgoris Environment & Land Appeal No 4 of 2021 be set-aside and/or varied.
 - e. That the Bill of Costs dated October 12, 2022 in its entirety be taxed before another taxing Officer or this Honourable Court.
 - f. That cost of this Application be provided for.
2. The reasons in support of the above prayers are provided as follows; -
 - i) The Taxing Officer failed to consider the material facts, namely that, the Advocates did not give proof of services rendered in the suit.



- ii) The Taxing Officer erred by neglecting the tariff set out in the Remuneration Order prescribing the amount payable in similar cases.
 - iii) The taxed amount emanating from the Bill of Costs is manifestly excessive and oppressive.
 - iv) The Taxing Officer failed to use and/or apply the figures contained in the Remuneration order.
 - v) The decision by the Taxing Officer was therefore unjust and unfair thereof.
3. The present application was then served upon the Respondent who opposed the same by filing a Statement of Grounds of Opposition dated February 23, 2023.
4. The Respondent grounds of opposing the present application are as follows; -
- i) The present application was time barred and/or prohibited by the provisions of rule 2 of the Advocates Remuneration Order.
 - ii) The present application has not captured and/or established any prima facie reasons for the granting of the orders sought therein.
 - iii) The present application has not captured and/or disclosed any reasonable cause of action.
 - iv) In the circumstances thereof, the present application was not merited, mischievous and incompetent.
5. The Applicant in support of the present Application filed his submissions dated March 23, 2023 on the April 5, 2023 while the Respondent filed his submissions dated April 14, 2023 on the April 17, 2023.
6. The Honourable Court has perused the pleadings herein and the submissions filed thereof and identifies the issues for determination as follows; -
- Issue No 1- Is Their A Valid Reference Before The Honourable Court?
- Issue No 2- Is The Applicant Entitled To The Prayers Sought In The Present Application?
- Issue No 3- who bears the costs of the present application?
7. The Honourable Court having duly identified the issues for determination, the same will now be discussed and determined as hereinbelow; -

Issue No 1- is their a valid reference before the honourable court?

- 8. The first issue is whether there is a valid Reference against the ruling of the Taxing Officer pronounced on the December 15, 2015.
- 9. It is not in dispute that the Bill of Costs dated October 12, 2022 was heard and thereafter a Ruling pronounced on the December 15, 2022.
- 10. The Applicant being aggrieved by the said Ruling of the Taxing Officer pronounced on the December 15, 2022 wrote a letter seeking for the reasons applied by the Taxing officer to arrive that the taxed figure.
- 11. So far, the Taxing Officer has not responded to the Applicant's letter dated December 15, 2022.
- 12. 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.
13. In the case of *Twiga Motor Limited v Hon Dalmas Otieno Anyango* [2015], eKLR the Court made the following Observation; -
- “The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.”
14. In another case of *Nyakundi & Company Advocates v Kenyatta National Hospital Board* [2005] eKLR, the
- “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.”
15. The interpretation of Order 11 Rule 1 & 2 by this Honourable Court is that the process of filing a Reference against the ruling of Taxing Officer is undertaken in two steps.
16. The first step is the preparation and filing of a Notice of Objection against the said ruling by the Taxing Officer which should be done within 14 days from the date of pronouncement.
17. The second step is the filing of a Chamber Summons application before the Judge which should take place within 14 days after the Taxing Officer has supplied the reasons and/or grounds relied upon in the preparation of the Taxation Ruling.
18. In the present Application, the Applicant annexed a letter objecting the Taxing Officer’s Ruling dated December 15, 2022.
19. However, the said Letter of Objection dated December 15, 2022 bears a stamp indicating that the same was received in Court on the January 30, 2023.
20. It is therefore clear in the mind of this Honourable Court that the Letter of Objection dated December 15, 2022 was filed 45 days from the date of when the actual Ruling was pronounced.
21. Consequently, at the time when the Letter of Objection dated December 15, 2022 was filed, the period of 14 days provided under Order 11 Rule 1 of the *Advocates Remuneration Order* had since lapsed.
22. In addition to the above, the Applicant in prayer 2 is seeking for the following Order; -
- “That this Reference be deemed to have been duly lodged within the prescribed time.”
23. According to the provision of Order 11 Rule 2 of the *Advocates Remuneration Order*, a Reference can only be filed once the reasons used by the Taxing Officer have been supplied to the Objector and a Chamber Summons filed thereafter.



24. In the present application, the Applicant has stated that the Taxing officer has not yet supplied the reasons/grounds relied upon in the ruling.
25. The net effect of the above admission is that no Chamber Summons has been prepared in line with Rule 11 Rule 2 of the *Advocates Remuneration Order* to confirm that indeed a Reference has been filed and received by this Honourable Court.
26. In other words, there is no Reference filed by the Objector before the Court which can be deemed to regularised by the Applicant's prayer No 2.
27. In conclusion therefore, this Honourable Court is of the considered view that not only is the letter of objection filed out of time, there is also no Chamber Summons or a proper Reference before the Court which can be deemed proper and lawful to undertaken any further proceedings thereof.

Issue No 2- has the applicant entitled to the prayers sought in the present application?

28. The second issue is whether the Applicant has satisfied the principles for the granting of a stay of execution.
29. The basis of the Applicant seeking for an order of stay of execution is the presence of a Reference or at the very least the intention to file the same.
30. The purpose of the stay of execution will then be to preserve the subject matter which in this case would be the Ruling of the Taxing Officer until the said Reference is heard and determined thereof.
31. According to the understanding of this Honourable Court, a Reference is a form of an Appeal against the decision or order of a Taxing Officer emanating from a Bill of Costs filed by an aggrieved party.
32. Although the Applicant did not invoke the provisions of Order 42 Rule 6(2) of the *Civil Procedure Rules, 2010*, this Honourable Court is of the considered opinion that the prayer for stay of execution being sought in the present application should be determined on the principles outlined therein.
33. Unfortunately, there is no lawful and proper Letter of Objection filed by the Applicant against the said decision of the Taxing Officer as envisaged under Order 11 Rule 1 of the *Advocates Remuneration Order* or a Reference as envisaged under Order 11 Rule 2 of the *Advocates Remuneration Order*.
34. In the absence of these two pleadings provided under Order 11 Rule 1 & 2 of the *Advocates Remuneration Order*, then there are no proceedings which can be a basis of considering the issuance of a stay of execution order and or set-aside, vary or refer the entire Bill of Costs to any other Taxing Officer.
35. In essence, the Applicant herein has not provided sufficient grounds for the granting of the prayers sought in the present Application.

Issue No 3- who bears the costs of the present application?

36. It is settled law that costs usually follow the outcome of the proceedings.
37. In the present application, the Applicant has failed to successfully prosecute its case.
38. Consequently therefore, the Applicant is also condemned to pay the costs of the present application.



Conclusion.

39. In conclusion, the Honourable Court hereby makes the following Orders appertaining the Notice of Motion Application dated February 13, 2023; -

a. The notice of motion application dated February 13, 2023 be and is hereby dismissed.

b. The applicant will pay costs of the present application to the respondent herein.

DATED, SIGNED & DELIVERED Virtually in KILGORIS ELC Court on day of 21ST JUNE 2023.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: MR. NGENO

ADVOCATES FOR THE APPLICANT: MR. MOKAYA

ADVOCATES FOR THE RESPONDENT: N/A

