



Nabasenge t/a Kutto & Kaira Nabasenge Advocates v Sum & 2 others (Environment and Land Miscellaneous Application E039 of 2024) [2025] KEELC 1287 (KLR) (18 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1287 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E039 OF 2024
EM WASHE, J
MARCH 18, 2025**

BETWEEN

**KAIRA NABASENGE T/A KUTTO & KAIRA NABASENGE
ADVOCATES ADVOCATE**

AND

**VERONICA CHEPSAT SUM 1ST CLIENT
EDEL SUM 2ND CLIENT
EILEEN SUM 3RD CLIENT**

RULING

1. The Advocate (hereinafter referred to as “the Applicant”) filed a Notice of Motion dated 25th October, 2024 (hereinafter referred to as “the present application”) seeking for the following Orders against the 1st to 3rd Clients (hereinafter referred to as “the Respondents”); -
 - a. Spent
 - b. The Honourable Court be pleased to grant leave to the Applicant to file the instant Reference out of time and consequently the instant Reference dated 25th October, 2024 be deemed as duly filed;
 - c. The decision of the Taxing Officer (Deputy Registrar) vide her ruling dated 20th August, 2024 arising thereon in the Environment and Land Court at Eldoret ELC Misc. Application No. 50 of 2023; Kaira Nabasenge T/A Kutto & Kaira Nabasenge Advocates vs Veronica Chepsat Sum & 2 Others be set aside;
 - d. The said Bill of Costs dated 7th October, 2022 be taxed afresh by a differently constituted Taxing Court/Master;



- e. In the alternative and in the interest of justice, this Honourable Court be pleased to assess/ tax the costs contained in the said Applicant's Advocate - Client Bill of Costs and Party Bill of Costs dated 7th October, 2023 lawfully payable to the Applicant.
 - f. This court do issue such other orders/directions as it may deem fit and just to issue to serve the ends of justice in the circumstances herein.
 - g. Costs of this application be provided for.
2. The present application is founded on various grounds pleaded in the Supporting Affidavit sworn by the Applicant on the 25.10.2024 which are summarized as follows;-
- a. The Applicant pleaded that he was instructed by the 1st to 3rd Respondents to represent them in the proceedings known as Eldoret Chief Magistrate's Court Miscellaneous Application No. 91 of 2022.
 - b. The Applicant stated that the suit matter in the proceedings before the Chief Magistrates Court was a property measuring approximately 1,268 Acres and its value was KShs 600,000/- per acre thereby making the value of the subject matter to be KShs 760,800,000/-.
 - c. The Applicant was of the view that the Instruction Fees applicable in the Bill Of Cost should be guided by the value of the suit property which is KShs 760,800,000/-.
 - d. The Applicant informed the Court that on or about 07.10.2022, he filed a Bill of Costs dated 07.10.2022 which was duly assigned ELC MISC.APPLICATION NO. 50 OF 2022 seeking for costs of KShs 33,586,280/- against the 1st to 3rd Respondents.
 - e. However, the Taxing Master misdirected himself and/or herself in the manner in which the said Bill of Costs dated 07.10.2022 was assessed and only awarded the Applicant a sum of KShs 261,825/- through a Ruling pronounced on the 06.03.2023.
 - f. The Applicant being dissatisfied by the Ruling pronounced on the 07.10.2022 in the proceedings known ELC Misc.application No. 50 of 2022 elected to file a Reference before this Court which Reference was assigned ELC Misc. Application No. E016 of 2023.
 - g. The Reference known as ELC Misc Application No. E.016 of 2023 was duly heard on merit and a Ruling pronounced on the 31.10.2023.
 - h. In the Ruling made on 31.10.2023, the Court set-side the Ruling dated 06.03.2023 in the proceedings known as Eldoret Chief Magistrate's Court Misc Application No. 91 OF 2022 ad further directed that the Applicant's Bill of Costs dated 07.10.2022 be re-assessed afresh before another Taxing Officer.
 - i. Based on these directions on the Ruling pronounced on the 31.10.2023, the Applicant's Bill of Costs dated 07.10.2022 was placed before another Taxing Officer who upon consideration of the items therein assessed the same at Kshs 104,922/- through the Ruling dated 20.08.2024.
 - j. Once again, the Applicant not being satisfied by the decision of the Taxing Officer dated 20.08.2024 filed the present Application seeking for leave to file a Reference out of time and secondly to set-aside the assessment of the basis that the Taxing Officer misapprehended the manner in which the Instruction Fees was to be assessed.



- k. The Applicant stated that the reason why the Reference was filed out of time is because the Taxing Officer had pronounced that the Ruling would be read on 29.08.2024 but instead, the Taxing Officer read the same on 20.08.2024 without his knowledge and/or presence.
 - l. Upon the Applicant discovering that the Ruling had been pronounced on the 20.08.2024 instead of 29.08.2024, he sought to have the said file availed to him for perusal but his efforts were futile as the said file was not available.
 - m. It was only until 25.10.2024 when the Ruling dated 20.08.2024 was unloaded into the Court Tracking System (CTS) when time within which to file a Reference had already lapsed hence the present Application.
 - n. The Applicant therefore sought this Court to exercise its discretion and extend time within which he could file a Reference against the Ruling by the Taxing Officer pronounced on the 20.08.2024.
 - o. The Applicant was of the considered view that his intended Reference was merited and had a high chance of success.
3. The present Application was duly served on the 1st to 3rd Respondents who opposed the same through a Replying Affidavit dated 02.12.2024 sworn by the 2nd Respondent and stated as follows; -
 - a. The 1st to 3rd Respondents stated that the present Application was incompetent, fatally defective, misconceived, vexatious and an abuse of the Court process.
 - b. The 1st to 3rd Respondent pleaded that the Taxing Officer applied the correct principles and perimeters in assessing the Applicant's Bill of Costs dated 07.10.2022 based on the provisions of the Advocates Remuneration Order, 2014 and therefore the assessment pronounced on the 20.08.2024 was proper and justified.
 - c. The 1st to 3rd Respondents further pleaded that on diverse dated between 09.11.2021 and 19.07.2022, the Applicant was paid a total sum of KShs 2,217,500/- but there were no payment receipts and/or acknowledgement Notes that were done to them by the Applicant.
 - d. The 1st to 3rd Respondents averred that the subject matter of the proceedings known as Chief Magistrate's Court Miscellaneous Application No. 91 of 2022 were Orders of Re-Survey against the Director of Survey and not the ownership and/or a dispute about the value and/or ownership of the suit properties therein.
 - e. In essence, the 1st to 3rd Respondents view was that the Instruction Fees sought by the Applicant was excessive, without legal basis and punitive in view of the work done and therefore the assessment made on the 20.08.2024 was correct and proper.
 4. Upon filing of the Replying Affidavit by the 1st to 3rd Respondents, the Court directed that application to be canvassed by way of written submissions wherein the Applicant was his submissions dated 12.02.2025 while the Respondents had filed their submission on the 13.12.2024.
 5. The Court has indeed perused the pleadings before it and the submissions filed by the parties and identifies the following issues for determination; -

Issue No.1 – Is the applicant entitled to a prayer of extension of time within which to file a reference?

Issue No. 2- Can the applicant's application dated 25.10.2024 be deemed to be proper reference before the court?



Issue No. 3- If yes, is the applicant entitled to the prayers sought in the applicant dated 25.10.2024?

Issue No. 4- Who pays for the costs of the present Application?

6. The Court having duly identified the above-mentioned issues for determination, the same will be discussed as below; -

Issue No.1 – Is the Applicant entitled to a prayer of extension of time within which to file a reference?

7. The first issue for determination is whether or not the Applicant should be granted leave to file any Reference out of time as sought.

8. The Applicant in the present Application admits that no Reference was filed with the prescribed timelines provided under the Advocates Remuneration Order, 2014.

9. The Applicant in the grounds contained in the present Application as well as the Supporting Affidavit therein states that there was a confusion as to the date when the Ruling dated 20.08.2024 was to be pronounced.

10. According to the Applicant, the Bill of Costs dated 07.10.2022 was before the Taxing Officer on the 24.07.2024 when it was pronounced that the Ruling would be done on the 29.08.2024.

11. However, without any notice and/or the Applicant's knowledge, the Taxing Officer proceeded to pronounce the Ruling on the 20.08.2024 and uploaded the same of the Court Tracking System (CTS).

12. Thereafter in an effort to obtain the Ruling dated 20.08.2024, the Applicant wrote numerous letter seeking to be updated about the Ruling by the Taxing Officer but his efforts were futile.

13. The Applicant therefore sought to leave of this Court to extend time within which to file a Reference and deem the present Application as a Reference under the Advocates Remuneration Order, 2014.

14. The 1st to 3rd Respondents in their Replying Affidavit and the Submissions therein did not make any comments about the issue of extension of time.

15. To be able to resolve this issue, the Court seeks to look at the provisions of Rule 11 of the Advocates Remuneration Order, 2014 which provides as follows; -

“(i) should any party object to the decision of the taxing officer, may within fourteen (14) days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(ii) the taxing officer shall forthwith record and forward to the objectors 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.” (emphasis added)

16. Paragraph 11 (1) of the Advocates Remuneration Order states that any party seeking to object a decision of a Taxing Officer is required to give a Notice in writing to the Taxing Officer of the items of taxation to which he objects within 14 days from the date of the said assessment.

17. Thereafter, Paragraph 11(2) of the Advocates Remuneration Order provides that the Objector to the assessment will have Fourteen (14) days upon receipt of the Reasons given by the Taxing Officer to file a Chamber Summons challenging the said Reasons given by the Taxing Officer.



18. Looking at these two provisions, the fourteen (14) Days within which the Objector can file the Chamber Summons before the Judge starts running from the date when the Taxing Officer delivers the reasons and/or grounds for assessment to the Objector.
19. In the present Application before the Court, the Applicant who in terms of the Advocates Remuneration Order, 2014 is the Objector confirms that the Taxing Officer pronounced the assessment of the Bill of Costs dated 07.10.2022 on the 20.08.2024.
20. According to the Applicant, the Assessment pronounced on the 20.08.2024 was without notice to him and only came to know about it either on 21.08.2024 or the 29.08.2024.
21. The first thing that the Applicant is expected to have done either on the 21.08.2024 and/or the 29.08.2024 when he learnt about the assessment was to comply with Paragraph 11 (1) of the Advocates Remuneration Order, 2014 which was to give notice in writing to the Taxing officer on the items he wished to object.
22. The Applicant herein has not provided any such Notice in writing to the Taxing Officer under Paragraph 11 (1) of the Advocates Remuneration Order,2014 so that it can be deemed that the Applicant is intending to challenge the Assessment pronounced on the 20.08.2024.
23. In the absence of this Notice in Writing provided under Paragraph 11(1) of the Advocates Remuneration Order,2014, then the period of Fourteen (14) Days in Paragraph 11 (2) of the Advocates Remuneration Order, 2014 has not begun running and this Court cannot extent what has not lapsed yet.
24. As such, the prayer for extension of time within which to prepare and file a Reference sought by the Applicant is not justified and/or merited.

Issue No. 2- Can The Applicant's application dated 25.10.2024 be deemed to be proper reference before the court?

25. The second issue for determination is whether the present Application can be deemed to be a proper Reference for determination by this Court and the prayers sought therein granted.
26. Paragraph 11 (2) of the Advocates Remuneration Order, 2014 provides that the Objector can upon receipt of the reasons for assessment from the Taxing Officer file a Chamber Summons before the Judge.
27. A plain reading of the above proviso is that a Reference to the Judge should be by way of a Chamber Summons Application.
28. Secondly, the Chamber Summons can only be filed after the Objector and/or Applicant is in receipt of the reasons given by the Taxing Officer on how the assessment was done.
29. In the present Application, the Applicant herein filed a Notice of Motion Application rather than the prescribed Chamber Summons Application.
30. In addition to the above omission, the Applicant failed to produce the Notice in Writing to the Taxing Officer seeking the Grounds and/or Reasons on the Items he seeks to object in the assessment dated 20.08.2024 and the response from the Taxing Officer which gives the grounds and/or reasons as to why the Items Objected to were assessed in the said manner pronounced.
31. The failure of the Applicant to attach the Grounds and/or Reasons relied upon by the Taxing Officer in the assessment of the Bill of Costs dated 07.10.2022 as required by Paragraph 11 (2) of the Advocates



Remuneration Order, 2014 is that this Court does not have any reasoning from the Taxing Officer to evaluate whether there was a misapprehension of facts and/or the law to warrant an interference of the said assessment pronounced on the 20.08.2024.

32. As such, this Court is of the considered view that the present Application is pre-mature and contravenes the provisions of Paragraph 11 (1) and (2) of the Advocates Remuneration Order, 2024 hence cannot be deemed to be a lawful Reference to facilitate the evaluation of the validity and/or correctness of the Taxing Officer's assessment pronounced on the 20.08.2024.

Issue No. 3- Is the Applicant entitled to the prayers sought in the Applicant dated 25.10.2024?

33. Based on the determinations in Issue No. 1 and 2 hereinabove, the Court is of the considered view and finding that the prayers sought for in the present Application are not merited and cannot be granted.

Issue No. 4- Who pays for the costs of the present Application?

34. Costs usually follow the event and in the present Application, the Applicant is condemned to pay the costs thereof.

Conclusion

35. In conclusion, the Court hereby makes the following Orders in determination of the present Application; -
- a. The Notice of Motion dated 25.10.2024 is not merited & therefore dismissed forthwith.
 - b. The applicant is condemned to pay the costs of the application to the respondent.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON THE 18TH DAY OF MARCH 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Advocates for the Applicant: Mr Nabasenge

Advocates for the Respondent:ms Otuma Hb For Mr. Gichana

