



**Grace Bible Church Machakos & another v Kyalo & another  
(Environment and Land Miscellaneous Application E029 of 2021)  
[2023] KEELC 22207 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22207 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E029 OF 2021  
CA OCHIENG, J  
DECEMBER 14, 2023**

**BETWEEN**

**GRACE BIBLE CHURCH MACHAKOS ..... 1<sup>ST</sup> APPLICANT**

**CHRISTOPHER MUSEMBI MUTISO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JACKSON MUNYAO KYALO ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD MUMO KIOKO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is before Court for determination is the Applicants' Chamber Summons Application dated the 3<sup>rd</sup> June, 2023 brought pursuant to Rule 11 (1) (2)(4) of the [Advocates Remuneration Order](#), Order 22 Rule 22 and Order 42 Rule 6 of the [Civil Procedure Rules](#) as well as Sections 1A and 3A of the [Civil Procedure Act](#). The Applicants seek the following Orders:
  1. Spent.
  2. Spent.
  3. That the Court be pleased to extend the time within which a Notice of Objection and the Reference may be filed in relation to the Ruling dated 6<sup>th</sup> April, 2023 and the Certificate of Costs dated 12<sup>th</sup> April, 2023 as relates to the Respondents' party and party Bill of Costs dated the 15<sup>th</sup> February, 2023.
  4. That the Honourable Court does set aside the decision of the Deputy Registrar dated 6<sup>th</sup> April, 2023 for error of law, falsification of law, failure to adhere to the established known principles of



taxation, including the guiding principles of Schedule 6 of the *Advocates Remuneration Order* 2014.

5. The Costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of the 2<sup>nd</sup> Applicant Christopher Musembi Mutiso where he deposes that the decision in the taxation dated the 6<sup>th</sup> April, 2023 was never served or emailed to his Counsel. He explains that the matter was previously before Hon. Kenei but the taxation was determined by Hon. Nyoike and a Ruling decreeing that he pays Kshs. 84,280 granted. Further, that the Certificate of Taxation certified that the Respondents' Bill of Costs was taxed at Kshs. 84,280 but an Application for execution of Decree was awarded Kshs. 87,280. He contends that the Respondents' Counsel did not serve the Notices relating to the mentions of 1<sup>st</sup> February, 2023, 15<sup>th</sup> February, 2023, 6<sup>th</sup> March, 2023 and 6<sup>th</sup> April, 2023, during which time the matter was contemporaneously listed before Hon. Kenei as well as Hon. Nyoike, leading to confusion as the same file was listed before two different courts concurrently. He claims there was falsification of the court record by Hon. Nyoike as pertains to appearances on 15<sup>th</sup> February, 2023 when it alleged that the Applicants' Counsel appeared before her, which is untrue. He explains that it is only on 4<sup>th</sup> May, 2023 when a Notice to Show Cause was served upon him and the Applicants, yet a Ruling on the taxation and the Certificate of Taxation had been issued on the 6<sup>th</sup> and 12<sup>th</sup> April, 2023 respectively. Further, the service of the Notice to Show Cause was irregular as the email address designated for process serving in this cause is the Respondent's Advocates' email and not the email from which the Notice to Show Cause emanated from. He insists that both the Bill of Costs dated the 6<sup>th</sup> April, 2023 and the Certificate of Taxation dated 12<sup>th</sup> April, 2023 have never been served upon him. He reiterates that failure to serve the Notices on the delivery of the Ruling on the Taxation and the Certificate of Costs were calculated to forestall the filing of the Objection and Reference within timelines mandated by law. Further, that deliberate failure to serve notices pertaining to the delivery of the Rulings on Taxation and Certificate of Costs prevented his Counsel from filing an Objection and the Reference as per the deadlines stipulated in the *Advocates Remuneration Order*.
3. The Respondents' opposed the instant Application by filing a Replying Affidavit sworn by Francis N. Sila Advocate where he deposes that the instant Application is frivolous, vexatious, baseless, afterthought and an abuse of the court process. He contends that the 2<sup>nd</sup> Applicant filed an Application dated the 5<sup>th</sup> May, 2021 seeking leave to Appeal out of time which was dismissed with costs to the 2<sup>nd</sup> Respondent on 24<sup>th</sup> February, 2022. Further, that after the dismissal of the Application dated the 5<sup>th</sup> May, 2021, the 2<sup>nd</sup> Applicant filed Nairobi Civil Appeal No. E 402 of 2022 which is yet to be determined. He claims that the 2<sup>nd</sup> Respondent's Bill of Costs dated the 15<sup>th</sup> February, 2022 was therefore in respect to the Applicants' Application dated the 5<sup>th</sup> May, 2021 which was dismissed. He insists that the Notice to Show Cause was properly issued as it was pursuant to taxed costs and there are no reasons advanced whatsoever for the same to be set aside. Further, that the 2<sup>nd</sup> Applicant should have filed an Application for stay of the Notice to Show Cause before the Court of Appeal in Civil Appeal No. 402 of 2022 and not seek to set it aside before this court. He explains that on 1<sup>st</sup> February, 2023, the court was not sitting and the matter scheduled for mention on 15<sup>th</sup> February, 2023 of which he served a mention notice vide the email address of kokimbulu@gmail.com. Further, that on 15<sup>th</sup> February, 2023, neither the 2<sup>nd</sup> Applicant nor his advocate appeared in court and the Ruling on taxation was scheduled on 30<sup>th</sup> March, 2023 but later rescheduled on 6<sup>th</sup> April, 2023. He contends that there was no falsification of court records and insists it was the duty of the Applicants' or their advocates to peruse the court file and confirm directions given. He confirms that the Bill of Costs was taxed at Kshs. 84,280 on 6<sup>th</sup> April, 2023 but the Applicants failed to file an objection within the stipulated time. He reiterates



that there is inordinate delay in filing the objection. He states that the 2<sup>nd</sup> Applicant was served with a Notice to Show Cause to his advocate's vide email address of kokimbulu@gmail.com. He reaffirms that this was a Party to Party Bill of Costs and not an Advocate Client Bill of Costs and there was no need to file an Application for the Certificate of Taxation to be adopted as a Decree of the Court before execution by way of Notice to Show Cause to issue. He avers that the items in the Bill of Costs were reasonably taxed and the instant Application is a delaying tactic.

4. The Applicants filed a Supplementary Affidavit denying the statements in the Replying Affidavit and reiterating their averments as per the Supporting Affidavit.

The Application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon perusal of the Chamber Summons Application dated the 3<sup>rd</sup> June, 2023 including the respective affidavits and submissions, the only issue for determination is whether the Court should enlarge time to enable the Applicants' to serve a notice to the Taxing Officer on their objections to the Ruling delivered on 6<sup>th</sup> April, 2023 as well as lodge a Reference out of time.
6. The Applicants' seek to serve an objection to the Taxing Officer as well as lodge a Reference against the Ruling of the Taxing Officer dated the 6<sup>th</sup> April, 2023. They claim they were not aware of the date the Ruling was delivered to enable them lodge an objection to the taxed costs. They further dispute the amount of instruction fees awarded.
7. From the averments in the Replying Affidavit, the Respondents have not indicated whether the Applicants were ever served with a Notice of the Ruling which was delivered on 6<sup>th</sup> April, 2023. The Respondents have confirmed there was a change of the Ruling date but did not state whether the Applicants were not notified of the same. Further, they have argued that it was the duty of the Applicants' to peruse the Court file to confirm the directions given. The Applicants claim the Taxing Officer indicated that their Counsel was present in court, yet she did not attend court.
8. The Applicants filed the instant Application two (2) months after delivery of Ruling after they had been served with a Notice to Show Cause. They have explained that it is only on 4<sup>th</sup> May, 2023 when a Notice to Show Cause was served upon them, yet a Ruling on the taxation and the Certificate of Taxation had been issued on the 6<sup>th</sup> and 12<sup>th</sup> April, 2023 respectively. The Respondents in their response have not demonstrated if they indeed served the Applicants' with the Ruling Notice. Further, there is no indication if the Taxing Master notified the Applicants of the new date slated for the impugned Ruling.
9. Clause 11 of the [Advocates Remuneration Order](#) stipulates that:
  - (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.”
10. The above cited legal provisions give the Court a wide discretion to enlarge time to lodge an objection. In the case of *Peter Julius Njoroge V Fidelity Commercial Bank Limited & Another* (2018) eKLR, the Court found a delay of forty five (45) days not inordinate and allowed an application for enlargement of time to file a Reference.
11. In the current scenario, I note that the Applicants were not notified of the date of the Ruling in respect to the impugned taxation. I opine that this is a good reason enough for failing to lodge an objection within fourteen (14) days of the said Ruling. Even though the Respondents have opposed the instant Application insisting it is a delaying tactic, while associating myself with the decision cited, I opine that the Applicants' have provided plausible reasons to allow the court exercise its discretion to enlarge time. Further, I will excuse the delay as it was not inordinate and allow the instant Application.
12. I direct the Applicants to lodge an objection as well as a Reference within fourteen (14) days from the date hereof.
13. In the foregoing, I find the Chamber Summons Application dated the 3<sup>rd</sup> June, 2023 merited and will allow it.
14. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 14<sup>TH</sup> DAY OF DECEMBER, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

