



**Kithugu v Gathua (Environment and Land Miscellaneous Application
E027 of 2024) [2025] KEELC 3303 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3303 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E027 OF 2024**

JM MUTUNGI, J

APRIL 24, 2025

**IN THE MATTER OF THE PARTY AND PARTY BILL OF COSTS AND
CERTIFICATE OF TAXATION IN KERUGOYA M. C. E. L. C CASE NO E002 OF 2023**

BETWEEN

NANCY WANGECHI KITHUGU APPLICANT

AND

DOMINIC KARIMI GATHUA RESPONDENT

RULING

1. This Ruling is in respect of to the Applicant’s Notice of Motion dated 25th October 2024. It has been brought under Sections 1, 1A, 3, 3A and 89 of the *Civil Procedure Act*, Schedule 7 of the Advocates Remuneration Order and Paragraph 11 of Advocates Remuneration Order. The Applicant seeks the following orders:
 1. Spent.
 2. That pending the hearing and determination of this application and further orders of the Court, this Court do order a stay of execution of the Respondent’s bill of costs in M.C ELC CASE No. E002 OF 2023 arising from the taxing officer’s ruling delivered on 10th July 2024.
 3. That the decision of the Honourable Magistrate delivered on 10/7/2024 with respect to item No. 1 being instruction fees be set aside and the party and party bill of costs dated 20/3/2024 be taxed afresh by this Honourable Court.
 4. That the costs of this application be in the cause.
2. The application is supported on the grounds set out on the of the application and the Supporting Affidavit sworn by the Applicant of even date. The Applicant deponed that she was the defendant in Kerugoya MCELC No. E002 of 2023, a suit for removal of caution in which she had filed a



Counterclaim. She averred that the Respondent's suit was allowed, while her Counterclaim was dismissed with costs. Subsequently, the Respondent's advocate filed a Party and Party Bill of Costs dated 20th March 2024. The Applicant objected to the bill, particularly Item No. 1, which related to instruction fees, which was assessed at Kshs. 250,000/-. The Applicant asserts that the instruction fees were incorrectly assessed as the claim was unliquidated and no valuation report was presented. According to her, the amount allowable under Schedule 7(2) of the Advocates Remuneration Order should not exceed Kshs. 50,000/-.

3. The Respondent opposed the application through Grounds of Opposition dated 23rd January 2025, asserting that the application was fatally defective, incompetent, and offended the provisions of Order 42 Rule 6(2)(b) of the Civil Procedure Rules. Further, the Respondent contended that no sufficient grounds were advanced by the Applicant to justify interference with the discretion exercised by the Taxing Master.

Analysis and Determination

4. It is trite that a Court will only interfere with the decision of a Taxing Officer where it is demonstrated that:

1. The Taxing Officer erred in principle; or
2. The amount awarded is manifestly excessive or low to justify such inference.

5. This was reiterated in the Case of Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd & Another [1972] EA 162, First American Bank of Kenya v Shah & Others [2002] 1 EA 64, and Joreth Ltd v Kigano & Associates [2002] 1 EA 92.

6. In First American Bank of Kenya Vs Shah and Others [2002] E.A.L.R 64 AT 69, the Court held as follows;

“First, I find that on the authorities, this Court cannot interfere with the Taxing Officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle”.

7. Additionally, as was held in the Case of Machira & Co. Advocates v Magugu [2002] 2 EA 428, any party aggrieved by a decision on taxation must pursue the procedure under Paragraph 11 of the Advocates Remuneration Order:

“...any complaint about any decision of the Taxing Officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item... is ventilated by way of a Reference to a Judge in accordance with paragraph 11.”

8. Paragraph 11 of the Advocates Remuneration Order provides for the procedure an aggrieved party must follow in challenging taxation or assessment of costs. It provides that:“

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- (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. Under Paragraph 11(1) of the Advocates Remuneration Order, the objector must give written notice to the Taxing Officer within fourteen days of the taxation decision identifying the items objected to, and upon receiving the Taxing Officer's reasons, file a reference within fourteen days thereafter.
 10. In the present matter, there is no evidence that the Applicant complied with the requirements of Paragraph 11(1) of the Advocates Remuneration Order. The record does not show that the Applicant gave written notice to the Taxing Officer of the items objected to, nor is there any indication that the Taxing Officer provided reasons for the decision. Consequently, the present application is premature and procedurally flawed, as a proper reference under Paragraph 11 did not precede it.
 11. In the absence of compliance with the procedural requirements under Paragraph 11 of the Advocates Remuneration Order, this Court lacks the jurisdiction to entertain the present application. The application is thus incompetent and is hereby struck out with no order as to costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF APRIL 2025.

J. M. MUTUNGI

ELC - JUDGE

