



**Ngahu v Mukiri & another (Environment & Land Case
181 of 2011) [2022] KEELC 15712 (KLR) (29 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 15712 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 181 OF 2011**

**LN MBUGUA, J
JUNE 29, 2022**

BETWEEN

JOHN MWANGI NGAHU PLAINTIFF

AND

MARY MUKIRI 1ST DEFENDANT

NAIROBI COUNTY GOVERNMENT 2ND DEFENDANT

RULING

1. Judgement was entered in 1st defendant's favour on 3.5.2017. Subsequently, the 1st defendant filed her party and party bill of costs dated February 23, 2018 and by a ruling dated November 16, 2022, the bill was taxed at Ksh.686,393/=.
2. The plaintiff then filed a reference to the bill vide the Notice of Motion application dated December 18, 2022 which is for determination. He seeks a review /setting aside of the bill dated February 23, 2018. He also seeks orders that taxation of the bill of costs on items 3(b), 11 to 18, 20, 22, 24, 34, 32, 38, 60(c), 130 and 139 be reviewed and the same be re-taxed.
3. The application is premised on grounds on its face and on the plaintiff's supporting affidavit sworn on December 18, 2022. He avers that he is aggrieved by the ruling of the Taxing Officer dated November 16, 2022 since the taxing officer misdirected herself in the assessment of costs and relied on extraneous matters and not on evidence on record.
4. The application is opposed by the 1st defendant through a preliminary objection dated March 31, 2023 which raised grounds that the reference is defective for having been filed out of time and that the application is an abuse of the court process as it raises no reasonable cause of action against the ruling of the Taxing Officer which was based on the correct legal principles in taxing and assessing the 1st defendant's Bill of costs.



5. No response was filed by the 2nd defendant.
6. The Plaintiff's written submissions are dated March 11, 2023 where he argues that the award of ksh.120, 000/= under Item 3 (b) of the bill of costs was excessive considering that the suit was for preservative and declaratory orders where no value was quoted for the subject matter. He contends that the award should have been Ksh.75, 000/= under section 6 (b) of the [Advocates Remuneration Order](#), 2014.
7. The plaintiff also argues that the award of ksh.225, 000/= purportedly for the separate orders issued in the counterclaim judgement is unconventional, an error in principle and amounted to duplicity, an award for instructions having been made at item 3 (b).
8. Under Items 11-22, the plaintiff faults the award of ksh.3, 360/= made since there was no clarity and proposes that ksh.1,100/= would have been reasonable. He also faults the award of ksh.5000/= on item 111 on the basis that the judgement was delivered online.
9. Finally, the plaintiff submits that under Item 130, ksh.115,000/= awarded was excessively high considering that the award in the judgement was ksh.300,000/= and getting up fees under schedule 6 of the [Remuneration Order,2014](#) provides 1/3 of instructions fees for getting up fees.
10. The 1st defendant's written submissions are dated June 12, 2023. She relies on Rule 11 of the Advocates (Remuneration) Order as well as the case of [Pyramid Motors Limited v Lang'ata Gardens Limited](#) [2015] eKLR to submit that the plaintiff's reference is time barred as it ought to have been filed 14 days after the Ruling of the Taxing Officer.
11. It is also the 1st defendant's submission that the Taxing Officer applied the correct principles in assessing instruction fees and on other items objected to.
12. The issue for determination is whether the Plaintiff's application is time barred and whether he has established a basis to interfere with the Taxing Officer's ruling dated November 16, 2022.
13. Rule 11 of the [Advocates \(Remuneration\) Order](#) provides as follows:
 - “ 1) 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 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;“
14. In [Parmuati Oloishuru Kore v Eric Ntabo and Co. Advocates](#) [2019] eKLR the court stated that in matters exercise of discretion the court has to consider the length of the delay and the reasons for such a delay, whether the applicant could suffer substantial loss and the degree of prejudice that may occur.



15. Thus if sufficient cause for excusing delay is shown, discretion is given to the court to disregard the delay and admit the reference out of time. The instant reference was filed on December 15, 2022, thus the plaintiff was about 2 weeks out of time, the ruling herein having been delivered on November 16, 2022. The plaintiff has not given the slightest explanation for the delay, he simply went ahead to prosecute his application without answering to the issue of delay.
16. I find that the reference is time barred and no reasons for delay have been advanced. Thus the application dated December 18, 2022 is hereby dismissed with costs to the 1st respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Nduati for Plaintiff Applicant

Aswani for 1st Defendant

Court assistant: June

