



REPUBLIC OF KENYA



Langat v Langat & 2 others (Environment and Land Miscellaneous Application E011 of 2024) [2025] KEELC 3097 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3097 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2024
LA OMOLLO, J
APRIL 3, 2025**

BETWEEN

CHESILIM LANGAT APPLICANT

AND

FRANCIS LANGAT 1ST RESPONDENT

JOSEPH LANGAT 2ND RESPONDENT

PHILIP LANGAT 3RD RESPONDENT

RULING

1. This ruling is in respect of the Respondents preliminary objection dated 27th May, 2024. It is on the following grounds;
 - a. The said application is bad in law and incurably defective as it offends the mandatory provisions of paragraph 11 of the Advocates Remuneration Order which states:-

Should any party object to the decision of the taxing officer he may within 14 days after the decision give notice in writing to the Taxing Officer of the items of taxation to which he objects”
 - b. No objection has been filed in regard to the ruling on taxation delivered on 5th March, 2024 to date.
 - c. No request has been made to the Taxing Officer to give reasons regarding the taxed items to enable the appellant invoke the jurisdiction of this Court to consider any decision on any objected item(s).
 - d. The Taxing Officer has rendered no communication containing his reasons for the impugned taxation as by law required to enable to reconsider the same. (sic)



- e. The application is statute barred as it is filed out of time allowed by law without any leave of this Court.
- f. The application is misconceived and is otherwise an abuse of the process of the Court.
- g. There can be no stay of execution on costs.
- h. The application is openly frivolous and intended to abuse the process of this Court.

Factual Background.

2. The Applicant commenced the present proceedings vide the Notice of Motion application dated 9th May, 2024 wherein he seeks the following orders;
 - a. That Honourable Court hear and determine this matter in the first instance and service thereof be dispensed with. (sic)
 - b. That pending hearing and determination of this application, this Honourable Court be pleased to order stay of execution of the ruling of the taxing master dated 5th March, 2024 and all consequential orders.
 - c. That the decision of the Taxing Officer be set aside/removed/quashed and vacated by way of reference.
 - d. That in the alternative, the Honourable Court be pleased to order that the Respondents bill of costs be taxed afresh by another taxing master.
3. In response to the said application, the Respondents filed the Preliminary Objection under consideration. It is dated 27th May, 2024.
4. On 30th September, 2024 the Court issued orders that the Preliminary Objection be heard by way of written submissions.
5. On 31st October, 2024, the matter was mentioned to confirm filing of written submissions and then reserved for ruling.

The Applicant's Response to the Preliminary Objection.

6. In response to the preliminary objection the Applicant filed a Replying Affidavit sworn on 31st July, 2024.
7. He deposes that he is a lay person and that he prepared the application dated 9th May, 2024 with the help of his children and grandchildren who were studying similar applications from the internet.
8. He also deposes that he was not aware that there were timelines within which to file a reference. He adds that he is old, 'financially disabled' and feeds from hand to mouth.
9. He further deposes that it was not mandatory for him to seek reasons for taxation from the Taxing Master as a party is allowed to file a reference without seeking reasons.
10. It is his deposition that it is not true that a party cannot seek orders of stay of execution of costs as alleged by the Respondent as this is an order that can be granted by the Court.
11. It is also his deposition that he did not file his application out of time and he prays that the Court exercises its discretion in his favor and he be allowed to ventilate his reference fully without it being dismissed.



12. It is further his deposition that the Court has discretion which he prays that the Court exercises in deeming his application as being properly on record.
13. He deposes that he is a pauper and does not have the money the Taxing Officer ordered him to pay.
14. He also deposes that he stands to suffer irredeemably if his reference is not heard.
15. He ends his deposition by urging the Court to dismiss the preliminary objection dated 27th May, 2024 and deem his reference dated 9th May, 2024 as duly filed.

Issues for Determination.

16. Both the Respondents and the Applicant filed their submissions on 31st October, 2024.
17. The Respondents in their submissions submit on the following issues;
 - a. Whether the Preliminary Objection herein is premised on a pure point of law
 - b. Whether the application is incurably defective.
 - c. Whether the orders sought should be granted.
18. With regard to the first issue, the Respondents rely on the judicial decisions of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696, Lubullellah & Associates Advocates v NK Brothers Ltd [2014] eKLR and submit that their preliminary objection is in response to the Applicant's application which was brought under Paragraph 11 of the Advocates Remuneration Order.
19. The Respondents also submit that their preliminary objection is founded on Paragraph 11 of the Advocates Remuneration Order and it is therefore premised on a pure point of law.
20. With regard to the second issue, the Respondents set out the grounds on the face of their preliminary objection and while relying on Paragraph 11 of the Advocates Remuneration Order submit that the procedure for filing a reference begins with the aggrieved party issuing a notice within fourteen days of the items he/she is objecting to.
21. They also submit that upon receipt of the notice containing the items objected to, the Taxing Officer gives reasons for his decision. Upon receipt of the reasons, the aggrieved party within fourteen days' files an application to the High Court setting out the grounds of objection.
22. They further submit that if a party is dissatisfied with the determination of the High Court, he seeks leave of Court to appeal to the Court of Appeal.
23. It is the Respondents submissions that the Taxing Officer delivered his ruling on 5th March, 2024 while the Applicant filed his application on 9th May, 2024 which was two months later.
24. The Respondents rely on the judicial decisions of Tom Ojienda & Associates v National Lands Commission [2017] eKLR, Microsoft Corporation v Mitsumi Computer Garage Ltd & another [2001] eKLR, Elijah Njuguna Njoki v Peter Muriu Njuguna & 4 Others [2021] eKLR and submit that the Applicant has not met the requirements as set out under paragraph 11 of the Advocates Remuneration Order.
25. The Respondents submit that even if the Applicant was to seek for enlargement of time to file a reference, he has not set out the reasons for the inordinate delay.



26. The Respondents rely on the judicial decisions of County Executive of Kisumu vs County Government of Kisumu & 8 others [2017] eKLR, Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR, Rakesh Rajpal v Paola Giacosa [2022] eKLR and urge the Court to dismiss the Applicant's application.
27. On the third issue, the Respondents submit that among the orders sought by the Applicant is an order of stay of execution of the ruling delivered on 5th March, 2024.
28. The Respondents submit that the conditions to be met in an application for stay of execution pending hearing and determination of a reference to a judge from taxation of costs are similar to the conditions for stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules.
29. The Respondents submit that the Court has to consider whether there is substantial loss, whether there has been provision of suitable security for due performance of the terms of the decree and whether the application was filed without unreasonable delay.
30. The Respondents rely on the judicial decision of Kenya Shell Limited v Kibiru [1986] KLR 410 and submit that the Applicant has not demonstrated that he will suffer substantial loss if the orders sought are granted.
31. The Respondents submit that the Applicant also seeks that the decision of the Taxing Officer be set aside.
32. The Respondents rely on the judicial decisions of Premchand Raichand Limited & another vs Quarry Services of East Africa Limited & another [1972] EA 162, First American Bank of Kenya vs Shah and Others (2002) EA 64, Joreth Ltd vs Kigano and Associates (2002) 1 EA 92 and submit that the Applicant's application does not meet the principles set out in the said judicial decisions to warrant the setting aside of the decision on taxation.
33. The Respondents conclude their submissions by urging the Court to dismiss the Applicant's application and to uphold the preliminary objection.
34. The Applicant in his submissions relies on the decision in Mukisa Biscuit Manufacturing Company vs West End Distributors Limited [1969] EA, David Karobia Kiiru vs Charles Nderitu Gitoi & another [2008] eKLR and submit that a preliminary objection must raise a pure point of law.
35. The Applicant also submits that the Preliminary Objection dated 27th May, 2024 does not raise pure points of law.
36. The Applicant further submits that his application dated 9th May, 2024 does not offend the mandatory provisions of paragraph 11 of the Advocates Remuneration Order.
37. The Applicant then submits on the following issues;
 - a. Whether the application is fatally defective as it offends the mandatory provisions of paragraph 11 of the Advocates Remuneration Order.
 - b. Whether this Court should enlarge the time within which to file an objection against the decision of the taxing officer delivered on 9th September, 2019 (sic) and if so what directions should issue on the hearing of the reference.
38. With regard to the first issue, the Applicant relies on Paragraph 11 of the Advocates Remuneration Order and submits that in his application he is seeking for orders of stay of execution of the ruling of the Taxing Officer delivered on 5th March, 2024.



39. The Applicant also submits that the amounts awarded by the Taxing Officer warrant re-taxation as the Taxing Officer ignored critical guiding considerations by for instance failing to peg the instruction fees to the value of the subject matter.
40. The Applicant submits that the Respondents interpretation of Paragraph 11 of the Advocates Remuneration order offends Article 159(2) of the Constitution which requires justice to be administered without undue regard to technicalities.
41. The Applicant relies on the judicial decisions of Postal Corporation of Kenya vs Donald Kipkorir & 3 Others [2005] eKLR, EA Power Management Ltd vs Stephen Kithi trading as Steve Kithi & Co. Advocates [2012] eKLR in support of his submissions.
42. With regard to the second issue, the Applicant submits that he was not served with any Taxation Notice as he was only served with a Notice to Show Cause one month after the Taxing Officer had delivered his ruling.
43. The Applicant submits that that is the reason for the delay in filing the application dated 9th May, 2024 where he is seeking for stay orders and for the setting aside of the ruling of the Taxing Officer.
44. He admits that he did not file a Notice of Objection and submits that it was a mistake which he prays for the Court not to penalize him.
45. The Applicant seeks for extension of time to file the reference as provided for under Paragraph 11(4) of the Advocates Remuneration Order. The Applicant relies on the judicial decisions of Joseph Mweteri Igweta vs Mukira M'ethare & Attorney General [2002] eKLR , Philip Chemwolo & Mumias Sugar Co. Ltd vs Augustine Kubende [1986]eKLR, Sheikh t/a Hasa Hauliers v Highway Carriers Ltd [1988] eKLR in support of his submissions.
46. The Applicant concludes his submissions by urging the Court to dismiss the Respondents preliminary objection dated 27th May, 2024 with costs.

Analysis and Determination.

47. I have considered the preliminary objection and the rival submissions and it is my view that the only issue that arises for determination is whether the Respondents preliminary objection dated 27th May, 2024 has merit.
48. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained. Further, a preliminary objection must stem from the proceedings and raise pure points of law and should not deal with disputed facts nor should it derive its foundation from factual information.
49. In the judicial decision of Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd (1969) EA 696 the Court held as follows;

“ A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts



pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

50. In the judicial decision of *Ushago Diani Investment Limited v Abdulwahab* (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling) the Court cited with approval *Oraro v Mbaja* [2005] eKLR 141, where the Court held as follows on the nature of preliminary objections;

“A preliminary objection is now well identified as and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection and yet it bears factual aspects calling for proof or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”

(Emphasis mine)

51. The Respondents preliminary objection is on several grounds. The first ground is that the Applicant filed the Notice of Motion application dated 9th May, 2024 without complying with the provisions of Paragraph 11 of the Advocates Remuneration Order.
52. The other grounds on the preliminary objection are that the Applicant did not file an objection to the ruling of the Taxing Officer delivered on 5th March, 2024, that the Applicant did not request for reasons for the taxed items and that the Notice of Motion application was filed out of time.
53. In response the Applicant contends that the Respondents preliminary objection does not raise pure points of law but admits that he filed the Notice of Motion application dated 9th May, 2024 out of time.
54. In the judicial decision of *Vaghjiyani Enterprises Limited v Osundwa & Company Advocates* [2021] eKLR the Court held as follows;

“10. The question which then arises is whether the Preliminary Objection raised herein is on pure points of law...

11. In so far as Paragraph 11 of the ARO is concerned, an appeal against the decision of the Deputy Registrar shall be a matter to be lodged within 14 days from the date of the order or certificate of costs. In this instance, it is not disputed that contrary to the clear provisions of the ARO, the initial application to set aside the ruling on taxation was filed out of time, without the leave of the court, on 23rd September 2019 almost two months after the delivery of the impugned ruling on taxation...

14. Courts have taken the position that they lack the jurisdiction to determine the merits of a reference filed outside the statutory stipulated period. This is the position that was taken in *N. W. Amolo T/A Amolo Kibanga & Company Advocates v Samson Keenga Nyamweya* [2016] eKLR where the court observed that the court is divested with jurisdiction to determine the merits



of a reference that is filed outside the statutory stipulated period.” (Emphasis mine)

55. The Respondents preliminary objection is on the ground, among others, that the Applicant filed his reference out of time. This ground of objection goes to the jurisdiction of this Court to hear and determine the Applicant’s reference hence a point of law.

56. 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.
- (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.”

57. As afore stated, the first, second and third grounds on the Respondents Preliminary Objection are that the Applicant did not file an objection to the Taxing Officer’s decision and neither did he seek reasons for the decision of the taxing officer.

58. In response the Applicant contends that it was not mandatory for him to seek reasons before filing the reference.

59. In *Multiline Motors (Kenya) Ltd v Migori County Government* [2021] eKLR the Court held as follows;

“I need not rehash the provisions of Paragraph 11 (1) of the ARO which clearly provide that if a party is dissatisfied with the decision of the taxing officer then he has to give Notice of objection; itemizing the items objected to. The applicant has not filed such Notice within fourteen (14) days as per the law. Learned Counsel Mr. Singei submitted that the provision is not couched in mandatory terms. In its application, the applicant annexed and marked “PO1” being a copy of the said ruling dated 28/10/2021. The aforementioned annexure is a copy of the handwritten ruling. On the face of it, there seems to be no reasons advanced on why the specific items in the bill of costs dated 13/8/2021 were taxed as so. In considering



the provisions on Paragraph 11 (1) of the ARO, Odunga J in *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* [2012] eKLR had this to say:-

“In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.”

Even if no reasons are indicated on the face of the application, the applicant has the duty to notify the taxing officer to give the reasons, the only person who can give reasons for their decision is the taxing officer which should indicate whether they took into account irrelevant matters or applied wrong principles of law in reaching their findings. It is upon the grounds that the Court would find good ground to refer the bill of costs for re-taxation before the same officer or a different taxing officer. If the ruling is without reasons, what the applicant is expecting this Court to do, is to sit as if it is taxing the bill afresh which is not the proper procedure under the law. The applicant must comply with the due process under paragraph 11 of AMO.”

60. Upon perusal of the Court record, this Court notes that neither the Applicant nor the Respondents have attached a copy of the ruling of the taxing officer delivered on 5th March, 2024.
61. This Court has taken the liberty of perusing Kericho ELC Case No. 9 of 2019. The Taxing Officer taxed the Respondents bill of costs dated 12th October, 2023 on 5th March, 2024.
62. The Court record has a handwritten ruling delivered by the Taxing Officer and on the face of it, no reasons have been given. In the circumstances, it was imperative for the Applicant to seek reasons for the Taxing Officer’s decision.
63. The other ground on the preliminary objection is that the Applicant filed the reference out of time. The Applicant admits that he filed the reference after the fourteen-day period within which to file a reference had lapsed. He attributes this delay to nonservice of the Taxation Notice.
64. The Taxing Officer delivered his ruling on 5th March, 2024 while the Applicant filed his reference on 9th May, 2024.
65. The Applicant in his submissions seeks for an extension of time within which to file a reference as provided for under Paragraph 11(4) of the Advocates Remuneration Order. This Court notes that the Applicant in his application did not seek for extension of time within which to file his reference.
66. It is trite law that submissions are not pleadings and new issues cannot be raised in submissions. In the judicial decision of *ASSL v ASMB* [2020] eKLR the Court held as follows;

“17. It is trite law that new issues cannot be raised in submissions. In the case of *Republic vs. Chairman Public Procurement Administrative Review Board & another Ex parte Zapkass Consulting and Training Limited & another* [2014] Korir, J. stated:

“The Applicant, the respondents and the interested party all introduced new issues in their submissions. Submissions are not pleadings. There is no evidence by way of affidavits to support



the submissions. New issues raised by way of submissions are best ignored.”

67. Considering that submissions are not pleadings this Court shall ignore the question whether time within which to file a reference should be extended.

68. In *Multiline Motors (Kenya) Ltd v Migori County Government* (supra) the Court while considering a preliminary objection to a reference found that the decision of the taxing officer did not have any reasons and the Applicant did not seek reasons. Further the Court also found that the reference had been filed out of time. The Court in allowing the preliminary objection held as follows;

“Further to the above, the taxing officer’s decision is dated 28/10/2021. This application was filed on 18/11/2021 which is outside the fourteen (14) days allowed for giving of notice to the taxing officer. The applicant has not sought leave of this Court to file the Notice out of time in accordance with paragraph 11 (4) of ARO. The application is therefore incompetent...

There is a clear procedure set out in paragraph 11 of ARO which the applicant must follow. No reason has been given why the applicant has not complied with that procedure...

From the foregone (sic), I am satisfied that the application dated 17/11/2021 offends the clear provisions of Paragraph 11 (1) of the Advocates (Remuneration) Order. It is incurably defective, improper, unprocedural and an abuse of the Court’s process, I uphold the Preliminary Objection. The application dated 17/11/2021 is struck out with costs to the respondent.” (Emphasis mine)

69. Similarly, in the present matter, the decision of the Taxing Officer does not contain any reasons and it was therefore mandatory for the Applicant to seek for reasons. Further, the application dated 9th May, 2024 was filed out of time and without leave. There is no doubt that the Applicant’s Notice of Motion application dated 9th May, 2024 offends the provisions of Paragraph 11 of the Advocates Remuneration Order.

Disposition.

70. The upshot of the foregoing is that the Respondents Preliminary Objection dated 27th May, 2024 succeeds. Consequently, the Applicant’s application dated 9th May, 2024 is hereby struck out with costs.

71. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3RD DAY OF APRIL, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Parties. Absent

Court Assistant; Mr. Joseph Makori.

