



**Mulisa v Wesonga (Environment & Land Case 134 of 2014)  
[2022] KEELC 12645 (KLR) (27 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12645 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 134 OF 2014  
DO OHUNGO, J  
SEPTEMBER 27, 2022**

**BETWEEN**

**JUMA KULUNDU MULISYA ..... PLAINTIFF**

**AND**

**SOFIA NASICHE WESONGA ..... DEFENDANT**

**RULING**

1. The plaintiff moved the court through Originating Summons dated April 28, 2014, claiming that he had become entitled to 2 acres of the parcel of land known as South Wanga/Lureko/449 by adverse possession. Upon the suit being heard on the merits, it was dismissed with costs, through ruling delivered on July 27, 2021. The defendant then filed her party and party bill of costs dated September 23, 2021 which was taxed on December 1, 2021 by the Deputy Registrar, as drawn, at KShs 211,225.
2. The plaintiff later filed Chamber Summons dated February 28, 2022, which is the subject of this ruling. The following orders are sought in the application:
  1. [Spent]
  2. That this honourable court do grant the applicant leave to be heard on the reference herein filed out of time.
  3. That this honourable court be pleased to order that the Ruling of the taxing officer Hon. R. N. Akee delivered on December 1, 2021 be stayed pending the hearing and determination of this reference.
  4. That the honourable court be pleased to set aside the decision of the Deputy Registrar Honourable R.N Akee delivered on December 1, 2021 to the extent that it relates to the quantum awarded thereon as well as the reasoning and determination pertaining to item no. 1 on the Respondent's bill of costs dated September 23, 2021.



5. That the Honourable court be pleased to set aside the decision of the Deputy Registrar Hon. R.N Akee delivered on December 1, 2021 to the extent that it relates to the quantum awarded thereon on attendances in particular on items nos. 2,7,8,9,10 and 13 of the Respondent's bill of costs dated September 23, 2021.
  6. That the Honourable court be pleased to set aside the decision of the Deputy Registrar Hon. R.N. Akee delivered on 01/12/2021 to the extent that it relates to item no.5 that is attestation to Replying Affidavit which item is not provided for under advocates Remuneration Act hence the said item ought to have been taxed off the entire figure of kes.1000/-.
  7. That the honourable court be pleased to reassess the tax due to the afore said items or in the alternative the Honourable court do re-tax the entire bill of costs dated September 23, 2021.
  8. That costs of this application be granted.
3. The application is supported by an affidavit sworn by the plaintiff. He deposed that the taxation of the bill was manifestly excessive and that the taxing officer failed to consider his submissions. He added that he only became aware of the ruling on February 17, 2022 when he called on his advocate.
  4. The application was opposed through a replying affidavit sworn by Otinga Ochume Patrick, an advocate of this court who is on record for the defendant. He deposed that no explanation has been offered by the plaintiff as to why he did not file a reference in time, yet the date of ruling was scheduled in the presence of counsel for the plaintiff. He added that a certificate of taxation was served upon counsel for the plaintiff on January 26, 2022 and that the present application has been brought in bad faith.
  5. Parties relied entirely on the application and their respective applications and urged the court to render a ruling.
  6. I have considered the application and the respective affidavits. The ruling in respect of the taxation having been delivered on December 1, 2021, the plaintiff was required by Rule 11 (1) of the Advocates (Remuneration) Order to give notice in writing to the taxing officer of the items of taxation to which he objects by December 15, 2021. A perusal of the record shows that the plaintiff did not give any notice of objection until February 28, 2022, outside the specified period. The first question to be determined therefore, is whether the plaintiff should be allowed to file a reference out of time.
  7. Whether or not to extend time is essentially a matter of discretion. The factors that the court takes into account while considering such an application include the length of the delay, the reason for the delay and the degree of prejudice to the respondent if the application is granted. See *Ng'ang'a v Muiruri* (Civil Application E139 of 2022) [2022] KECA 688 (KLR) (22 July 2022) (Ruling).
  8. The present application was filed on February 28, 2022, some three months after the ruling on taxation. Considering that counsel for the applicant was aware of the date of delivery of the ruling, I consider the delay to be inordinate. The applicant has not offered any explanation for the delay, save to state that he became aware of the ruling on February 17, 2022 when he called on his advocate. On the other hand, the respondent has demonstrated that a certificate of taxation was served upon counsel for the applicant on January 26, 2022. Clearly, the applicant did not take any immediate action even after being alerted of the ruling.
  9. In view of the foregoing, the plaintiff/applicant has not shown sufficient cause to warrant exercise of discretion in his favour. No valid reasons have been advanced to justify allowing the plaintiff/applicant to file a reference out of time. That being so, there would be no basis upon which to determine prayers



3 to 7 of the application. In the result, Chamber Summons dated 28<sup>th</sup> February 2022 is dismissed with costs to the defendant.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

The plaintiff in person

No appearance for the defendant

Court Assistant: E. Juma

