



REPUBLIC OF KENYA



KENYA LAW
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**Nchebere v M’Akwalu & 3 others (Environment and Land Appeal
96 of 2019) [2022] KEELC 15131 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 96 OF 2019**

CK NZILI, J

NOVEMBER 30, 2022

BETWEEN

PETER NCHEBERE APPELLANT

AND

M’INANGA M’AKWALU 1ST RESPONDENT

KIUNGA M’AKWALU 2ND RESPONDENT

SILAS ITONGA 3RD RESPONDENT

STEPHEN MUGAMBI AMBURUGUA 4TH RESPONDENT

RULING

1. This ruling relates to the application dated July 15, 2022 and the preliminary objection dated August 1, 2022. In the application the court is asked to set aside the *ex parte* taxation notice and stay of execution of the certificate of taxation pending hearing of this application. The grounds are contained on the face of the application and the supporting affidavit of Peter Nchebere sworn on July 15, 2022. The applicant averred that he was not notified of the date for taxation, was condemned unheard and it was only fair that he been heard on merits before the bill is taxed.
2. As regards the preliminary, the court is urged to find the application filed by a law firm improperly on record by dint of order 9 rule 9 of the *Civil Procedure Rules*.
3. By a judgment dated April 14, 2021, this court allowed the applicant to lodge a complaint within a period of 21 days as regards parcel No’s 3543, 1664, 1504 and 5930 recorded in the names of the respondents. He was also condemned to pay costs of the appeal.
4. As at the time the judgment was rendered, the applicant was represented by the firm of Gatari Ringera & Co Advocates who were duly served with a notice of taxation dated July 8, 2021 and filed written submissions dated August 17, 2021. A certificate of costs was eventually issued on November 16, 2021.



5. It appears that on November 3, 2021 the firm of L Kimathi Kiara & Co Advocates filed a notice of motion dated November 2, 2021 for contempt of court on behalf of the applicants against the 4th respondent and an interested party which the latter responded to by an affidavit in reply dated December 6, 2021.
6. This court rendered its decision to the application dated November 2, 2021 on February 16, 2022.
7. The record indicates that a notice to show cause dated June 8, 2022 was issued against the applicant why he should not be committed to civil jail for non-payment of the taxed costs.
8. Looking at the record it is quite apparent that the applicant was duly served with and participated in the taxation of proceedings through his authorized lawyers on record.
9. To date, the said lawyers are yet to be replaced in line with order 9 rule 9 of the Civil Procedure Rules.
10. In absence of compliance with the law, the court file indicates that no leave to come on record has been sought and obtained by the firm of L Kiara Kimathi Advocates to replace the applicant's "former" lawyers. Similarly, no notice of appointment has been filed by the said law firm to act together with the law firm properly on record.
11. Further, the applicant has not said that his advocates on record had no instructions to oppose the bill of costs or failed to adequately represent him.
12. Additionally, the manner and the procedure of objecting to taxed costs is provided under the Advocates Remuneration Order and section 51 (2) of the Advocates Act. It is only after the court has been moved in the appropriate manner that it can interfere with the decision of the taxing master.
13. There is no reference before this court. See Kipkorir Tito & Kiara Advocates v Deposit Protection Fund Board (2005) eKLR, Lubulletlah & Associates v NK Brothers Ltd (2014) eKLR.
14. In the circumstances I find the preliminary objection merited. The same is upheld. The notice of motion dated July 15, 2022 is hereby struck out with costs to the respondents.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF NOVEMBER, 2022.

In presence of:

C/A: Kananu

Mwendwa for respondents

HON. C.K. NZILI

ELC JUDGE

