



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Homescope Properties Limited v George Ng'ang'a Mbugua t/  
a Mbugua Ng'ang'a & Co Advocates (Environment & Land Case  
E052 of 2022) [2022] KEELC 15508 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15508 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E052 OF 2022  
LC KOMINGOI, J  
NOVEMBER 24, 2022**

**BETWEEN**

**HOMESCOPE PROPERTIES LIMITED ..... CLIENT**

**AND**

**GEORGE NG'ANG'A MBUGUA T/A MBUGUA NG'ANG'A & CO  
ADVOCATES ..... DEFENDANT**

**RULING**

1. This is the chamber summons dated March 14, 2022 brought under Rule 11 and 12 of the [Advocates Remuneration Order](#).
2. It seeks:-
  1. Spent.
  2. Spent.
  3. That this honourable court be pleased to enlarge the time and allow the instance reference against the decision of the taxing officer delivered on November 30, 2021 to be deemed as properly filed.
  4. That the decision of the learned Deputy Registrar dated November 30, 2021 with respect to all items of the Respondent's Advocate-client bill of costs dated May 24, 2021 be set aside and taxed afresh by this honourable court.
  5. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 7 to 19.



4. The application is supported by the affidavit of Mohammed Ahmed, a director of the Client/Applicant sworn on the May 14, 2022.
5. The application is opposed. There is a replying affidavit sworn by George Nganga Mbugua, Advocate/Respondent sworn on the April 7, 2022.
6. On the April 28, 2022 the court with the consent of the parties directed that the chamber summons be canvassed by way of written submissions.

### **The Client's/Applicant's Submissions**

7. They are dated June 28, 2022. They raise four issues for determination: -
  - (a) Whether the execution of the certificate of costs arising from the Ruling of November 30, 2021 should be stayed.
  - (b) Whether the time to file a reference should be extended.
  - (c) Whether the reference filed herein should be allowed.
  - (d) Who should bear the costs of this application.
8. Counsel submitted that the Applicant was not aware of ELC 793 of 2013 that led to the filing of the Advocate-Client bill of costs. Further that the Respondent was not given formal instructions and without establishing whether there existed an Advocate-Client relationship between the parties herein, the taxing officer taxed the bill of costs *ex parte*.  
He has put forward the cases of [\*Labh Singh Harman Singh Ltd v Attorney General & 2 Others \[2016\] e KLR\*](#); [\*Rocky Driving School v Cute Kitchen Ltd \[2015\] e KLR\*](#); [\*Kenya National Highways Authority v Ahmed Nassir Maalim Abdullahi \[2020\] e KLR\*](#).
9. It is further submitted that ELC 739 of 2013; *HomeScope Properties Ltd & Another v David Gachuki & 2 others* is a matter filed on behalf of Residents of Eve Gardens Estate and not the Applicant Company. That the Applicant is merely a tenant of Eve Gardens Estate owning one unit together with nine other residents. Counsel urges the court to stay the execution of the certificate of costs pending hearing and determination of the reference.
10. Counsel submitted that clause 11 of the [\*Advocates Remuneration Order, 2009\*](#) is clear that the court has discretion to extend time for lodging a reference notwithstanding the expiry of the 14 day period prescribed for the reference from the taxing master's decision on costs. That the delay in filing the reference has not been inordinate and that the intended reference has a high probability of success considering the taxation was done *ex parte*.
11. Further that the Applicant was not accorded the right to be heard and seeks to exercise that right through the filing of this application. He has put forward the cases of [\*Richard Nchapi Leiyagu v IEBC & 2 Others\*](#); [\*George Kagima Kariuki & 2 Others v George M Gichimu and 2 Others \[2014\] e KLR\*](#); [\*Stanley Kaboro Mwangi & 2 Others v Kanyamwi Trading Company Ltd \[2013\] e KLR\*](#). The Applicant urged the court to consider that the delay in filing a reference was partly occasioned by lack of information on what was transpiring in ELC 793 of 2013.
12. The taxing master failed to appropriately tax the items since she did not establish whether the Respondent had instructions to act on behalf of the Applicant which information would have rendered the instant taxation against the Applicant void. He has put forward the case of [\*Chairman Constituency Development Fund Suna East Constituency \(CDF\) & another v Jambo Construction Ltd\*](#)



- [2022] e KLR. That the Applicant never passed a board resolution to appoint the Respondent's firm to act on its behalf.
13. Further that no fee note was shared with the Applicant and it failed to pay to warrant the taxation. He has put forward the case of Joreth Ltd v Kigano & Associates [2002] EA 92.
  14. It is further submitted that the matter not having been concluded, the amount awarded as getting up fees is not warranted. That this court has the mandate to interfere with the decision of taxing master where there is an error in principle and law and/or where the fee awarded is manifestly excessive.
  15. He prays that the application be allowed with costs to be met by the Respondent.

### **The Advocate's/Respondent's Submissions**

16. They are dated June 24, 2022. Counsel submitted that the application is misconceived, incompetent and an abuse of the court process in that it ought to be made in ELC Misc E103 of 2021 where the taxation was done as opposed to filing a separate application. He has put forward the case of IEBC v John Omollo Nyakongo t/a HR Ganijee & Sons [2020] e KLR.
17. The Applicant failed to object to the decision of the taxing officer within 14 days as required under Rule 11 (1) of the Advocates Remuneration Order. For that reason, there cannot be a valid reference under Rule 11 (2) of the Advocates Remuneration Order.
18. The failure to file the reference within the prescribed time was not due to any justifiable reason. The Applicant on February 12, 2021 wrote to the taxing officer requesting for reasons for the taxation. This is a clear indication that the Applicant was aware of the said ruling. The Deputy Registrar wrote back to the Applicant in a letter dated January 12, 2022 and explained that the reasons for the taxation were contained in the ruling dated November 30, 2021. The Applicant has filed its reference more than 60 days from the receipt of the Deputy Registrar's letter. He has relied on Rule 11(2) of the Advocates Remuneration Order and the cases of Governors Balloon Safaris Ltd v Skyskip Company Ltd [2015] e KLR; Evans Thiga Gatumu v Kenya Commercial Bank Limited [2012] e KLR.
19. The firm of the Respondent acted for HomeScope Properties Ltd, the Applicant, as the 1<sup>st</sup> Plaintiff in ELC 793 of 2013. Mr Ahmed Mohammed executed an affidavit in a notice of motion filed in the parent suit. A retainer can be implied from conduct of the parties. He has put forward the case of Ochieng, Onyango, Kibet & Ohaga Advocates v Akiba Bank Limited [2007] e KLR.
20. The Client/Applicant should be estopped from denying the existence of the retainer as it is a dishonest attempt to escape liability to pay for the legal services rendered. He has put forward the cases of Otieno Amisi & Co Advocates v Africa Merchant Insurance Co Ltd [2018] e KLR; Machira & Co Advocates v Arthur K Magugu & Another [2012] e KLR.
21. He prays that the application be dismissed with costs.
22. I have considered the chamber summons and the affidavit in support. I have considered the response thereto, the written submissions and the authorities cited. The issues for determination are:-
  - i. Whether the time to file a reference ought to be extended and if so should it be allowed?
  - ii. Whether the execution of the certificate of costs arising from the Ruling of November 30, 2021 should be stayed.
  - iii. Who should bear costs of this application?



23. Rule 11 of the [Advocates Remuneration Order](#) provides as follows:-

“ 11. Objection to decision on taxation and appeal to Court of Appeal

|   |  |
|---|--|
| (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) [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.   |  |
| (5) The High court shall have powers in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any steps; 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.” |  |

24. It is the Client/Applicant's case that the delay in instituting the reference was occasioned by lack of information on what was transpiring in ELC 793 of 2013 and the Advocate/Client bill of costs.

In the case of [George Kagima Kariuki & 2 Others v George M Gichimu & 2 Others \[2014\] e KLR](#) the court stated as follows:-

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable”.

25. Under Rule 11 (1) of the [Advocates Remuneration Order](#) the Applicant ought to have objected to the Taxation Officer's decision within fourteen (14) days. It failed to do so.



26. Rule 11 (2) of the [Advocates Remuneration Order](#) gives the Applicant 14 days to file a reference upon receiving reasons from the taxing officer.
27. The ruling by the Taxing officer is dated November 30, 2021. On December 12, 2021. The Applicant wrote to the taxing officer requesting for reasons for the taxation. The taxing officer wrote to the Applicant in a letter dated January 12, 2022 stating that the reasons for the taxation were contained in the ruling dated November 30, 2021.
28. This application was filed on March 14, 2022 more than sixty (60) days since the receipt of the letter from the taxing officer. In the case of [Governors Balloons Safaris Ltd v Skyship Company Ltd \[2015\] e KLR](#), it was held that a delay of 48 days after delivery of the taxation ruling had rendered the reference fatally defective. In the case of [Twiga Motors Limited v Hon Dalmas Otieno Onyango \[2015\] e KLR](#), It was held thus:-
- “The limits in Rule 11 of the [Advocates Remuneration Order](#) have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance”
29. I have gone through the affidavit of Mohammed Ahmed, sworn on the March 14, 2022 and I find that the same does not address the issue of delay in filing this reference from January 12, 2022 when the taxing officer wrote the letter giving the reasons for the taxation.
30. Having stated that the delay in filing this reference is not explained I decline to extend time within which to file reference.
31. I agree with the Respondent’s submissions that this application ought to have been filed in ELC Misc E103 of 2021 and not in a separate file. I find this to be an abuse of the court process.
32. Having stated that the delay in filing the reference has not been explained and not justified, I decline to go into the merits of the reference. As things stand there is no valid reference before this court.
33. In his affidavit, Mr Mohammed Ahmed denied that the Respondent’s firm had instructions to act for the Applicant. I have gone through the affidavit of George Nganga Mbugua and I am satisfied that the said firm was retained by the Applicant (1<sup>st</sup> Plaintiff in ELC 793 of 2013). In the case of [Ochieng, Onyango Kibet & Ohaga Advocates v Akiba Bank Ltd \[2007\] e KLR](#) the court observed as follows:-
- “It is not the law that an advocate must obtain a written authority from client before he commences a matter. The participation and authority of an advocate in a matter can be implied or discerned from the conduct of the client. In my view retainer is no more than an authority given to an advocate to act in a particular matter and manner. It may be restrictive, it may be wide. And nevertheless it can be implied from the conduct of the client/advocate “relationship”.
34. I agree with the Respondent’s submissions that the fact that Mr Mohammed Ahmed executed an affidavit in support of the notice of motion in ELC 793 of 2013 confirms that he allowed the Respondent to participate in the main suit with no objection.
35. I find that the Respondent acted for the Applicant within its knowledge and /or consent. It cannot be allowed to deny that there existed an Advocate-Client relationship.
36. In conclusion, I find no merit in this application and the same is dismissed. I order each party to bear own costs.



It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022.**

.....

**L KOMINGOI**

**JUDGE**

**In the presence of:-**

**In the presence of**

**Ms Taria Khaoma for Mr Chitechi Advocte for the Client-Applicant present Mr Isahi Advocate for the Respondent present\*\***

