



**Everton Coal Enterprises Limited v Wanjiru Theuri & Company Advocates (Miscellaneous Application 41 of 2021) [2022] KEELC 14855 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14855 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 41 OF 2021  
BM EBOSO, J  
NOVEMBER 16, 2022**

**BETWEEN**

**EVERTON COAL ENTERPRISES LIMITED ..... APPLICANT**

**AND**

**WANJIRU THEURI & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. On October 14, 2021, M/s Wanjiru Theuri & Company Advocates presented an advocate/client bill of costs dated August 12, 2021. The bill was drawn at Kshs 41,847,861. On August 29, 2022, the taxing officer of this court, Hon F Mutuku, taxed the bill of costs at Kshs 2,238,190. Her decision was rendered in the presence of Mrs Ngugi for the advocate/applicant and Mr Mbarire for the client/respondent. The decision was titled “Ruling In Taxation And Reasons”.
2. Subsequently, on September 20, 2022, the client, through M/s Mahugu Mbarire Advocates, presented a notice of objection to taxation dated September 9, 2022, intimating the client’s objection to the taxing officer’s decision on items 1, 51 and 85 of the bill of costs. On the same day, September 20, 2022, the client brought a reference by way of a chamber summons of even date, challenging the taxing officer’s decision. In response, the advocate brought a preliminary objection dated October 19, 2022, inviting this court to strike out the reference on the following verbatim grounds:
  - “ 1. The reference was filed out of time.
  2. The stay of execution sought is premature as no judgment has been obtained.
  3. The application lacks merit.”
3. The above preliminary objection is the subject of this ruling. The preliminary objection was canvassed through brief oral submissions in the virtual court on November 3, 2022. Ms Ngugi, counsel for the advocate, submitted that the impugned ruling was rendered on August 29, 2022 and the reference was



filed on September 20, 2022. Counsel contended that rule 11(1) of the [Advocates Remuneration Order](#) provided for a limitation period of 14 days. Counsel argued that the reference was brought outside the limitation period, hence it should be dismissed. Counsel added that in the absence of an order entering judgment in terms of the award of the taxing master, the plea for stay of execution was premature.

4. In response, Ms Mbarire, counsel for the client, submitted that the points raised by the advocate did not meet the requirements of a preliminary objection because they required evidence. Counsel added that his understanding of rule 11 of the [Advocates Remuneration Order](#) was that, a reference is to be filed within 28 days from the date when a decision is rendered by the taxing officer. It was the view of counsel for the client that the impugned decision was rendered on August 29, 2022 and the reference was filed on September 20, 2022, which was within the 28 days' limitation period. Counsel contended that there was no inordinate or deliberate delay. Counsel urged the court to sustain the reference. Counsel added that the client had not made any prayer for stay of execution, contending that, the client had only made a prayer for

“ stay of proceedings in the nature of execution.”.

5. I have considered the points raised in the notice of preliminary objection and the rival oral submissions presented by the parties. Two issues fall for determination in the preliminary objection. The first issue is whether the points raised in the preliminary objection meet the requirements of a preliminary objection. The second issue is whether any of those points has merit.

6. The Court of Appeal defined what point may be canvassed as a preliminary objection in the case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Limited* [1969] EA 696 as follows:

“ A preliminary objection is in the nature of what used to be demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increases costs and on occasion confuse issues. This improper practice must stop.”

7. The first point raised by the advocate relates to limitation of the time within which to initiate a reference. This is purely a point of law which can be disposed by looking at the instrument which initiated the reference, to determine whether or not it was initiated within the time prescribed by the law. Point numbers 2 and 3 call for interrogation of the merits of the reference and cannot be disposed at the preliminary stage by way of a preliminary objection. Consequently, the only point which qualifies to be disposed as a point of preliminary objection is point number 1, relating to limitation. I will proceed to consider the point.

8. The advocate objects to the reference on the ground that it was initiated out of the stipulated time and it was initiated without an order enlarging the time for initiating a reference. A reference under rule 11 of the [Advocate's Remuneration Order](#) is initiated by lodging a notice of objection under rule 11(1) of the [Advocates Remuneration Order 1962](#), which provides as follows:

“ (1) Should any party object to the decision of the (1) 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.”

9. The impugned decision of the taxing officer was rendered on August 29, 2022 in the presence of counsel for both parties. The notice of objection initiating the reference was lodged on September 20,



2022. This was clearly outside the 14 days stipulated under rule 11(1) of the [Advocates Remuneration Order, 1962](#).

10. Consequently, in the absence of an order enlarging the time for giving notice of objection to the taxation, the notice of objection dated September 9, 2022 and filed on September 20, 2022, together with the chamber summons filed on September 20, 2022, are incompetent. The result is that both the notice of objection and the chamber summons are struck out. The result is that the reference herein is struck out for having been initiated outside the prescribed limitation period. The client shall bear costs of the reference.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF NOVEMBER 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Mahugu Mbarire for the Applicant/Client

Mr Nganga for the Respondent/Advocate

Court Assistant: Ms Osodo

