



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lutere v Mwangi (Environment and Land Appeal 14 of 2019)  
[2022] KEELC 15194 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15194 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL 14 OF 2019  
FM NJOROGE, J  
DECEMBER 7, 2022**

**BETWEEN**

**MARY AKAI LUTERE ..... APPELLANT**

**AND**

**JOHNSTONE KAMAU MWANGI ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the appellant's chamber summons application dated August 2, 2022 brought under rule 11(2) of the [Advocates Remuneration \(Amendment Order\) 2014](#) which seeks the following prayers:
  - a. That the honorable court be pleased set aside the entire decision of the Taxing master (Hon Makau) dated March 13, 2022 taxing the respondent's party and party bill of costs allegedly dated June 5, 2020 at Kshs 91,700/= as well as all and/or any certificate of taxation emanating therefrom.
  - b. That the respondents party and party bill of costs allegedly dated June 5, 2020 and filed in court be ordered served upon the appellant and the same be taxed afresh before a different taxing officer.
  - c. That the costs of this application be borne by the respondent.
2. The application is supported by the sworn affidavit of PO Malanga filed on August 3, 2022. The grounds on the face of the application and the supporting affidavit are that on August 4, 2021 their firm of advocates was served with a bill of costs dated June 5, 2021; that from the ruling of the taxing master supplied to them on July 22, 2022, the taxing master presided over a different bill of costs which refers to an item of VAT which item was not on the bill of costs served upon them; that both bill of costs, the one served upon them and the one taxed had the same date; that the taxation done by the taxing officer was a nullity as the subject bill of costs was never served upon the appellant; that the taxing



master indicated in her ruling that the bill of costs was unopposed and yet they had taken directions that they file written submissions which they did; that the taxing master's decision did not pay heed to the parameters of taxing a bill such as ensuring that the bill is properly drawn.

3. Counsel for the respondent filed a replying affidavit sworn on September 16, 2022. She deposed that the appellant seems to have an issue with the fact that the bill of costs served upon them had no provision for VAT; that legal services are taxable and that the complaint of inclusion of the item of VAT is not enough reason to enable the appellant to demand for a fresh taxation; that the appellant was served with the actual bill of costs that the taxing master taxed; that the appellant was to file a reference with regard to the ruling but not demand for a fresh taxation; that the appellant filed her submissions which were also served upon the respondent; that the appellant did not file a response to the bill hence the taxing master's decision that the same was not opposed.

### **Submissions**

4. None of the parties filed their submissions.

### **Analysis and Determination**

5. After considering the application and the response thereto, the issues that arise for determination are whether there is a competent reference before the court and whether the court should set aside the decision of the taxing master's decision dated March 13, 2022.
6. Paragraph 11 of the [\*Advocates Remuneration Order\*](#) provides for the procedure to be followed by a party when dissatisfied with a decision of the taxing officer 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) 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.
7. The taxation ruling in this matter was delivered on March 13, 2022 while the application was filed on August 3, 2022. paragraph 11(1) of the [\*Advocates Remuneration Order\*](#) requires an applicant to give a notice in writing to the taxing officer on the items of taxation which he objects to within fourteen (14) days.



8. The court in the case of *Abmed Nasir Abdikadir & Co Advocates v National Bank of Kenya Limited* [2006] eKLR held as follows:

“Although rule 11(1) of the *Advocates Remuneration Order* stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek further reasons simply because of the unfortunate wording of sub rule (2) of rule 11 of the *Advocates Remuneration Order* demands so. The said rule was not indeed to be ritualistically observed when reasons for the disputed taxation are already contained in the formal and considered ruling...Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in the substance the same is dismissed.”

9. In this matter, the appellant did not seek for reasons for the ruling and in the aforementioned case, the court held that it is not mandatory for a party to seek for reasons when the same are evident in the ruling as was in this case.
10. The period between the date when the ruling was delivered which was on March 13, 2022 and August 3, 2022 when the present application was filed is 142 days. No reason for the delay was given.
11. Paragraph 11(4) of the *Advocates Remuneration Order*, gives the court power to enlarge the time provided for under paragraph 11(1) and (2). The applicant in this matter did not seek for extension of time before filing the present reference.
12. It is my view that there is no competent reference before the court as it was filed out of time and without the leave of court. The ruling by the taxing officer contained the reasons and the invocation of paragraph 11(2) of the *Advocates Remuneration Order* was unnecessary.
13. If the appellant was dissatisfied with the ruling on taxation that was delivered on March 13, 2022, she ought to have filed the reference within 14 days of the ruling which would have been by March 27, 2022. The reference was filed on August 3, 2022 which was clearly out of time and no application to enlarge time was sought by the applicant as provided under paragraph 11(4) of the *Advocates Remuneration Order*. Since there is no competent reference before the court, I will not address the second issue that had been identified for determination.
14. In conclusion therefore, the reference dated August 2, 2022 is hereby struck out with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 7<sup>TH</sup> DAY OF DECEMBER, 2022.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

