



REPUBLIC OF KENYA



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Cheruiyot v W.K Ngenoh t/a W.K Ngenoh Lessan & Co. Advocates (Environment and Land Miscellaneous Application E006 of 2024) [2025] KEELC 5006 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5006 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2024**

LA OMOLLO, J

JULY 3, 2025

BETWEEN

HEZRON KIMELI CHERUIYOT APPLICANT

AND

**W.K NGENOH T/A W.K NGENOH LESSAN & CO.
ADVOCATES RESPONDENT**

RULING

Introduction

1. This ruling is in respect of the Applicant's Notice of Motion application dated 19th March, 2024. It is expressed to be brought under Paragraphs 11(2), (4) and 13(2) of the Advocates Remuneration Order.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the ruling of the Honourable Nyakundi, the taxing officer delivered on 5th March, 2024 be set aside and or (sic) struck out and that the advocate-client bill of costs dated 6th October, 2023 be taxed afresh and or the Court do proceed to make a finding on that taxation.
 - d. That the costs of the reference be provided for.
3. The application is based on the grounds on its face and the supporting affidavit of one Hezron Kimeli Cheruiyot sworn on 19th March, 2024.



Factual Background.

4. The application under consideration first came up for hearing on 20th March, 2024. The Court granted interim orders of stay of execution pending hearing and determination of the application.
5. The Court issued directions that the application be served upon the Respondent. It was rescheduled to 17th April, 2024 for hearing.
6. The hearing of the application did not proceed on 17th April, 2024 and instead the parties took another hearing date i.e. 2nd December, 2024.
7. After several mentions, on 3rd February, 2025 the Court issued directions that the application be heard by way of written submissions. It was mentioned to confirm filing of submissions on 26th February, 2025 and reserved for ruling.

The Applicant's Contention.

8. The Applicant contends that his former advocate on record, W. K Ngenoh filed the bill of costs dated 6th October, 2023 vide a miscellaneous application.
9. The Applicant also contends that on 5th March, 2024 the Taxing Officer delivered his ruling and taxed the said bill of costs at Kshs. 312,649/=.
10. The Applicant further contends that he was aggrieved by the said decision and so he instructed his advocates on record to lodge a notice of objection.
11. It is the Applicant's contention that his objection was on the ground that the Taxing Officer failed to take into consideration the provisions of paragraph 13(3) of the Advocates Remuneration Order which provides that no advocate is entitled to instruction fees in an advocate client bill of costs. (sic) He goes on to state that there is therefore an apparent error on the taxation of item No's 1 & 2 of the bill of costs.
12. It is also the Applicant's contention that the Respondent has initiated the process of executing the Certificate of Costs that was issued by the Taxing Officer.
13. It is further the Applicant's contention that if an order for stay of execution of the ruling of the Taxing Officer delivered on 5th March, 2024 is not granted, the Respondent will proceed to execute it to his detriment.
14. He contends that the Respondent will not suffer any prejudice should the orders sought be granted.
15. He ends his deposition by praying that the ruling of the Taxing Officer delivered on 5th March, 2024 be set aside and/or struck out and the advocate-client bill of costs dated 6th October, 2023 be taxed afresh.

Respondent's Response.

16. On 2nd December, 2024 the Respondent informed the Court that he had filed a response to the application. The same is misfiled and is in the file relating to Kericho ELC Misc Application No. E009 of 2023.
17. The Replying Affidavit is sworn by W.K Ngenoh Lessan on 15th October, 2024.



18. The Respondent deposes that the Applicant's application is bad in law, incompetent, premature, misconceived and that it will occasion him (Respondent) grave prejudice if any of the orders sought are granted.
19. The Respondent also deposes that the Applicant should pending hearing and determination of this matter, be ordered to deposit Kshs. 312,649/= as security for costs in a joint account of the parties which account should attract interest.
20. The Respondent further deposes that there was an inordinate delay in the filing of the application under consideration as taxation was done on 5th March, 2024. He goes on to state that the present application is an afterthought as it has been filed after the Certificate of Costs and the decree has been issued.
21. In response to paragraph 5 of the affidavit in support of the application, the Respondent deposes that the Taxing Officer did not err by failing to consider Order 13 Rule 3 (sic) of the Advocate Remuneration Order.
22. It is the Respondent's deposition that the Applicant has not demonstrated to Court the irreparable loss he is likely to suffer if the present application is not allowed.
23. It is also the Respondent's deposition that the taxation by the Court and the issues of application for execution are proper and procedural. He goes on to state that the Applicant's application is tantamount to escaping responsibility of paying for professional work done.
24. He ends his deposition by stating that in the interest of justice, fairness and equity, the Applicant's application should be dismissed with costs.
25. On 23rd September, 2024 the Applicant filed a Further Affidavit.
26. He deposes that the ruling delivered by the Taxing Officer on 5th March, 2024 did not contain reasons. He also deposes that the Respondent is not entitled to costs as he (Respondent) did not file a Statement of Defence on his (Applicant)behalf in Kericho ELC Case No. 78 of 2017.
27. He further deposes that as a result of the said oversight, it became necessary for his current advocates to file an application to seek leave of Court to file a Statement of Defence out of time.
28. It is his deposition that given the said circumstances, the Respondent did not execute his duties as instructed and he is therefore not entitled to costs.
29. He ends his deposition by stating that allowing the ruling of the Taxing Officer to stand will be tantamount to allowing the Respondent to be paid for work not done which act will 'fly on the face of the law'.

Issues for Determination.

30. The Applicant filed his submissions dated 26th February, 2025 while the Respondent did not file any submissions.
31. The Applicant submits on the following issues;
 - a. Whether the ruling of Taxing Officer should be set aside.
 - b. Whether stay of execution of ruling of the taxing master should issue.



32. On the first issue the Applicant submits that the Taxing Officer taxed instruction fees at Kshs. 150,000/=.
33. It is the Applicant's submissions that the matter that was before the lower Court was a miscellaneous application and therefore the Taxing Officer ought not to have awarded instruction fees. The Applicant relies on Paragraph 13 (3) of the Advocates Remuneration Order.
34. The Applicant relies on the judicial decision of Joreth Limited versus Kigano & Associates [2002] eKLR and submits that the value of the subject matter could not be ascertained. The Taxing Officer therefore made an error in assessing the instruction fees.
35. On the second issue, the Applicant submits that the conditions to be met in an application for stay of execution pending the hearing and determination of a reference is similar to the conditions for stay of execution pending appeal. This is provided for under Order 42 Rule 6 of the Civil Procedure Rules.
36. The Applicant also submits that the Court considers whether the Applicant will suffer substantial loss and whether there is provision for suitable security for due performance of the terms of the decree and that the court will also consider whether the application has been filed without unreasonable delay.
37. The Applicant further submits that the application under consideration was filed without unreasonable delay. It is his submissions that the amount taxed is over Kshs. 100,000/= which is a substantial sum and should his reference succeed, he may not be able to recover it.
38. The Applicant concludes his submissions by urging the Court to allow his reference.

Analysis and Determination.

39. I have considered the Applicant's application, the further affidavit and the submissions. It is my view that the following issues arise for determination;
 - a. Whether the taxing officer's decision on the bill of costs dated 6th October, 2023 delivered on 5th March, 2024 should be set aside or taxed afresh.
 - b. Who should bear costs of the application.

A. Whether the taxing officer's decision on the bill of costs dated 6th October, 2023 delivered on 5th March, 2024 should be set aside or taxed afresh.

40. The Applicant is seeking that this Court sets aside the Taxing Officer's decision on the bill of costs dated 6th October, 2023 that was delivered on 5th March, 2024, on the ground that the Taxing Officer failed to take into consideration the provisions of Paragraph 13 (3) of the Advocates Remuneration Order.
41. The Applicant also contends that the Respondent did not file any Statement of Defence in Kericho ELC Case No. 78 of 2017 despite receiving instructions to do so and therefore he is not entitled to costs.
42. In response, the Respondent contends that the Taxing Officer did not err by not considering Order 13 Rule 3 (sic) of the Advocates (Remuneration) Order.
43. The Respondent also contends that there has been inordinate delay in the filing the application under consideration.
44. The decision of the Taxing Officer that the Applicant is seeking to set aside was delivered in Kericho ELC Misc Application No. E009 of 2023 W.K Ngenoh T/A Ngenoh Lessan & Co. Advocates vs Hezron Kimeli Cheruiyot.



45. The law concerned with challenging the decision of a taxing officer is in Paragraph 11 of the Advocates Remuneration Order. It provides as follows;

- “ 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 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 subparagraph (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 expired.”

46. Where a party is dissatisfied with the decision of a Taxing Officer, he has to give a Notice of Objection itemizing the items objected to especially where the taxing officer has not given any reasons for the decision.

47. A perusal of Kericho ELC Misc Application No. E009 of 2023 shows that the Taxing Officer taxed the bill of costs dated 6th October, 2022 on 5th March, 2024.

48. Item No. 1 on the bill of costs dated 6th October, 2023 is for “Instruction to prosecute a land case on issue of land encroachment measuring 100 meters by 600 meters, approximately 14 acres valued over 14 million” - Kshs. 390,000/=.

49. The taxing officer taxed item No. 1 at kshs. 150,000/= without giving reasons.

50. In the judicial decision of Evans Thiga Gaturu Vs Kenya Commercial Bank Ltd [2012] eKLR the Court held as follows;

“In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles. However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons.” (Emphasis mine)

51. This Court notes that the Taxing Officer’s decision delivered on 5th March, 2024 did not contain any reasons. It was therefore imperative that the Applicant seeks reasons.

52. The furnishing of reasons by the Taxing Officer or failure to do so forms the basis for this court referring the bill of costs for re-taxation before the same or different taxing officer. It is important to note that this court does not tax bills afresh and any attempt to do so would be unprocedural.



53. The Applicant also contends that he filed a Notice of Objection to the said decision. He has attached to his affidavit in support of the application a copy of an undated letter titled “Notice of objection to decision on taxation.” It is addressed to the Taxing Officer, Environment and Land Court.
54. I have taken the liberty of perusing the pleadings filed in Kericho ELC Misc Application No. E009 of 2023 and there is no such document filed.
55. In *Otieno v Co-operative Bank of Kenya Limited* (Miscellaneous Civil Case E119 of 2024) [2025] KEHC 4963 (KLR) (25 April 2025) (Ruling) Neutral citation: [2025] KEHC 4963 (KLR, the Learned Judge offers useful insights on the provisions of Paragraph 11 of the Advocates Remuneration Order, the legal position of a notice of objection and consequences of failure to file one. He states thus;

“Litigation under paragraph 11 is progressive. It goes step by step. It starts with the step under paragraph 11(1), followed by paragraph 11(2), and then paragraph 11(3). Consequently, there can be no reference to the Judge of the High Court without the reasons given by the taxing officer, and the taxing officer cannot give reasons unless prompted under paragraph 11(1). It is the objection to the taxing officer which triggers the reference, much the same way that the decision of the Judge on the reference triggers the appeal to the Court of Appeal. A reference cannot be mounted under paragraph 11(2), by jumping the step in paragraph 11(1). I have seen the decisions in *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited* [2017] eKLR (Meoli, J) and *David Anunda v John Karu* (sued on his own capacity and as Chairman of Kileleshwa Githunguri Road Residents Association) & 2 others [2021] KEELC 1785 (KLR) (Ogutu-Mboya, J). I agree with them. The notice of objection, envisaged under paragraph 11(1) (2), is the foundation for the reference to the judge, and without it there can be no reference. (Emphasis mine)

56. As afore stated, the Taxing Officer’s decision delivered on 5th March, 2024 did not contain any reasons. It is evident that the Applicant did not seek reasons for his decision. I note that the instant application was filed on 19th March, 2024, fourteen days after the Taxing officer’s decision. There was therefore no inordinate delay in its filing as contended by the Respondent.
57. In *Ms Advocates LLP (Formerly Triple A Law Llp/Triple A Advocates) v China Wu Yi (Kenya) Company Limited* (Environment and Land Miscellaneous Application E069 of 2020) [2023] KEELC 18074 (KLR) (6 June 2023) (Ruling) the Court cited *Muriu Mungai & Co. Advocates vs. New Kenya Co-Operative Creameries Ltd Nairobi (Milimani) HCMC No. 692 of 2007* where the Court held as follows;

“In the Court’s view, the applicant moved the Court too soon. More reminders should have been sent to the taxing officer for reasons or any other legal action that would have resulted in the taxing officer giving reasons to be taken to have the reasons given. Nobody else can give those reasons but the taxing officer and it has not been shown that the taxing officer is not available. And more importantly the Court cannot determine the matter in the absence of the taxing officer’s reasons for her decision in taxing the bill of costs as she did”. [Emphasis Mine]

Disposition.

58. Apart from there being no reasons for the Taxing Officer’s decision, there is also no evidence of filing the Notice of Objection. In the absence of these, the court cannot determine the present reference.
59. Consequently, the application dated 19th March, 2024 is hereby struck out with no order as to costs.



60. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 3RD DAY OF JULY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Okok for the Applicant.

W.K Ngeno for the Respondent.

Court Assistant; Mr. Joseph Makori.

