



Miller & Company Advocates v Murang'a County Government (Environment & Land Miscellaneous Case E008 of 2023) [2025] KEELC 5223 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5223 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E008 OF 2023**

MN GICHERU, J

JULY 14, 2025

BETWEEN

MILLER & COMPANY ADVOCATES APPLICANT

AND

MURANG'A COUNTY GOVERNMENT RESPONDENT

RULING

1. This ruling is on the chamber summons dated 5-11-2024. The summons which is by the Applicant is brought under Rule 11(1), (2) and (4) of the Advocates Remuneration order 2014 and Sections 1A and 3A of the Civil Procedure Act. The summons seeks the following residual orders.
 1. Leave to lodge a reference out of time.
 2. Setting aside of the decision of the taxing master delivered on 2-10-2024 by the taxing master in relation to the bill of costs dated 6-12-2023.
 3. That this court exercises its inherent jurisdiction and assesses the bill of costs dated 6-12-2023 afresh and or make such other order as regards the bill of costs in question.
2. The motion is based on nine(9) grounds and is supported by the affidavit of one Peterscott Mutua dated 5-11-2024. The gist of the summons is as follows. Firstly, the Applicant is aggrieved by the ruling on costs dated 2-10-2024 whereby the Applicant was awarded Kshs. 274,050/= as advocate/client costs instead of the Kshs. 330,077,630/= claimed in the bill of costs dated 6-12-2023. Secondly, the Applicant stands to suffer substantial and irreparable loss as there is likelihood that the Respondent may proceed to pay the taxed amount and is likely to have the certificate of costs endorsed as a judgment of the court to the detriment of the Applicant and the substratum of the reference shall continue to be eroded and rendered nugatory. Thirdly, the delay in filing the reference as per Rule 11 (1) was occasioned by the process of obtaining a copy of the ruling dated 2-10-2024. Fourthly, the delay was inadvertent on the part of the Applicant and not deliberate. Fifthly, the taxing master erred in principle



by hearing and determining the bill of costs dated 6-12-2025 at a scale lower than the one required by the Advocates Remuneration Order, 2014 and it is in the interests of justice that the bill be taxed before another Deputy Registrar or by this Court. Sixthly, the learned taxing master ought to have considered the Applicants submissions on the bill of costs that raised pertinent issues of law. Finally, the learned taxing master did not give any basis for taxing the bill at Kshs. 247, 150.00/=

3. The motion is opposed by the Respondent and in this connection, Dr. Newton I. Mwangi, the County Secretary of the Respondent has sworn a replying affidavit dated 10-12-2024 in which he responds as follows. Firstly, the ruling by the learned taxing master was uploaded in the case Tracking System five(5) days after its delivery and it is fallacious to claim otherwise. Secondly, the ruling of 2-10-2024 was delivered in the presence of the Applicant's advocate and it was prudent to lodge an objection with the taxing master within 14 days. Thirdly, the Applicant should first have sought reasons for the ruling from the taxing master before filing this application. Fourthly, the Applicant has not adduced any evidence to prove that there is an error in law or in principle in the decision of the taxing officer. Finally, the Applicant's explanation regarding delay is not satisfactory and the current application ought to be dismissed with costs.
4. Counsel for the parties filed written submissions dated 31-1-2025 and 25-1-2025 respectively. The Applicant's counsel identified two issues for determination as follows.
 - i. Whether this Court can extend time and grant leave to the Applicant to lodge a reference and/or objection out of time.
 - ii. Whether the decision of the taxing master delivered on 2-10-2024 should be set aside and reviewed.

On the other hand, the Counsel for the Respondent identified only one issue for determination which is –

- i. Whether the application is merited.
5. I have carefully considered the summons in its entirety including the grounds, the affidavits, the submissions and the law cited therein. I make the following findings on the issues identified by the parties.
6. On the first issue, I find that this court can, under Rule 11(4) of the Advocates Remuneration Order extend time and grant leave to the Applicant to lodge an objection against the decision of the taxing officer. This is because the subrule provides as follows.
 - (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..."

The question should have been as follows-

“Should this court extend time and grant the Applicant leave to file an objection out of time?”

This is because, the Applicant has not yet filed an objection with the taxing officer as required by Rule 11(1) above. Filing an objection is the first step. If the reasons given by the taxing officer do not satisfy the Applicant, then, the next option is to file a reference.

7. The ruling by the taxing officer was on 2-10-2024. The summons herein is dated 5-11-2024. The time provided for filing an objection is 14 days. The deadline for filing the objection was 16-10-2024. The summons though dated 5-11-2024 was received in court on 6-11-2024 just before noon. It was therefore late by 21 days. This is 1 ½ times the period within which the summons should have been filed. The record of 2-10-2024 shows that a counsel named Wanyonyi was present for the Applicant



when the ruling was read on 2-10-2024. It is my finding that the delay in filing was inordinate in all the circumstances of this case. The Counsel who was present during the ruling ought to have taken action within the timeline set by the law because he was aware that the ruling was not favourable to the Applicant immediately it was delivered. Since the top six items of the bill of costs were the only ones not allowed as drawn, it was easy to file an objection on those items even before being supplied with the ruling.

8. Regarding the second issue raised by the Applicant, I find no reason to set aside the ruling of the taxing officer dated 2-10-2024. At the heart of the taxation is the value of the subject matter. The size of the suit land is said to be 975 acres. The value of each acre is said to be Kshs. 4 million. There is no copy of the title deed to prove the size of the suit land. There is also no valuation report to prove that an acre of land is valued at Kshs. 4 Million. Without such evidence, it is difficult to see how the Applicant could succeed in his claim for costs of over 330 million. Such a whopping figure would need very strict proof. The supporting affidavit by Peterscott Mutua has only one annexure which is a copy of the ruling. It should have a valuation report and a copy of the title deed for the suit land or certificate of official search.
9. For the above stated reasons, I find no merit in the summons dated 5-11-2024 and I dismiss it with costs the Respondents
10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 14TH DAY OF JULY, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicants' Counsel – Mr Mutua

Respondent's Counsel – Miss Odago

