



REPUBLIC OF KENYA



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Wanyonyi & 2 others (suing on behalf of the estate of the late Vincent Wanyonyi Murambi) v County Government of Bungoma & another (Petition 15 of 2016) [2025] KEELC 5412 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5412 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

PETITION 15 OF 2016

EC CHERONO, J

JULY 10, 2025

**IN THE MATTER OF ARTICLES 22,23,40(1),(2),(3), 43(C),47
AND 259 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF SECTIONS 107-115 OF THE LAND ACT NO.6 OF 2012

AND

IN THE MATTER OF CONTRAVENTION OF THE CONSTITUTION OF KENYA 2010

BETWEEN

AQUINAS WANYONYI 1ST PETITIONER

DAVID MURAMBI 2ND PETITIONER

ANTHONY WANYONYI 3RD PETITIONER

**SUING ON BEHALF OF THE ESTATE OF THE LATE VINCENT WANYONYI
MURAMBI**

AND

COUNTY GOVERNMENT OF BUNGOMA 1ST RESPONDENT

KIBABII UNIVERSITY 2ND RESPONDENT

RULING

1. Before me for determination are two applications dated 23/04/2025 and 04/11/2024 which had initially been dismissed and reinstated by consent of the parties.



2. I shall first consider the application dated 23/04/2025 brought by the 1st and 2nd Respondents/Applicants seeking the following reliefs;
 - a. That the application herein be certified urgent and heard ex parte in the first instance;
 - b. That the Respondents/Applicants be granted leave to file a Taxation Reference to this Court against the Ruling of the assessed costs delivered on 2nd October, 2024.
 - c. That the objection to the Taxing Officer and the Application for Reference annexed hereto deemed as duly filed and served upon payment of requisite fees.
 - d. That costs of this Application be provided for.
 - e. That this Honourable Court be pleased to make such further or other Orders as it may deem just, fair and reasonable in the circumstances and for the ends of justice.
3. The application is premised on several grounds set out on the face of the application as follows;
 - a. That on 22nd October, 2024 the taxing master delivered a ruling in which the 1st and 2nd Respondents/Applicants' party and party bill of costs dated 24th April, 2024 were taxed at Kshs. 457,241.67/= in favour of the 2nd respondent whereas the 1st Respondent's bill of costs was entirely taxed off.
 - b. That the Respondents/Applicants herein being dissatisfied with the Ruling of the Honourable Harriet Getenga Deputy Registrar in Bungoma Petition No. 15 of 2016 regarding the Respondents/Applicants' Bill of Costs dated 24th April, 2024 and delivered on 02.10.2024 preferred Notices of Objection against the afore stated Ruling.
 - c. That the Respondents/Applicants were able to file notices of objection within 14 days as specified under sections 11 (1) and (2) of the [*Advocates Remuneration Order, 2014*](#).
 - d. That being aggrieved by the taxation the Respondents/Applicants wrote to the taxing officer raising objections to and requiring reasons for the taxation of a number of items.
 - e. That the Applicants equally served copies of the said notices on the Taxing Master and the Respondents/Applicants herein.
 - f. That unfortunately, to date the taxing master has not given the Respondents/Applicants the reasons for the taxation on the disputed items hence they are yet to file their reference to the judge as by law required.
 - g. That the delay in filing the reference was caused by the taxing master failure to bound reasons for the taxation as requested by the Respondents/Applicants *vide* both the Notice of objection and further by a letter requesting for reasons.
 - h. That if granted extension of time the applicants intend to file the reference timeously since the same are ready and can be deemed as filed and be so filed without any delays.
 - i. That the delay in this case is excusable for there are sufficient reasons for the Honourable court to exercise its discretion and grant leave to file the reference out of time.
 - j. That the intended reference carries a highly jurisprudential value question on the interpretation and applicability of Rule 62 of the [*Advocates Remuneration Order*](#) that requires determination by a superior Court where advocates have acted for two different parties.



- k. That no prejudice would be suffered by the Respondents/Applicants if the orders were granted for even the Respondents/Applicants intended to have the ruling of Honourable Harriet Getenga Deputy Registrar in Bungoma Petition No. 15 of 2016 regarding the Respondents/Applicants' Bill of Costs dated 24th April, 2024 and delivered on 02.10.2024 reviewed.
 - l. That there is no inordinate delay in bringing the instant application and the interests of justice favour the grant of this application.
 - m. That among the disputed items by the Respondents/Applicants is the fact that the Party and Party bill of costs as taxed on the 02.10.2024 at an impermissible and/inordinately low sum of Kshs. 457,241.67/= is in the premises of the work undertaken by the Advocates is an error in principle on the quantum of all items that warrants this Court's interference.
 - n. That the Ruling and/or decision of the Taxing officer is imprinted with errors of principle as exhibited in the draft reference which justify this Court to interfere with the Ruling and/or decision.
 - o. That it is just in the circumstances that this Court be pleased to allow this application in the terms prayed.
 - p. That it is in the interest of justice that this application be allowed.
4. The application is supported by the affidavit of Wangila Masinde sworn on even date.
 5. The Petitioners/Respondents were given time to file their response but none was filed. Neither of the parties also filed submissions as directed by this Court.

Legal analysis and determination.

6. I have considered the application under review, the grounds on the face of the application and the supporting affidavit as well as the applicable law.
7. In *First American Bank of Kenya Ltd v Gulab P Shah & 2 Others* Nairobi (Milimani) HCCC No. 2255 of 2000 [2002] 1 EA 65, the Court held that it has unfettered discretion under sub paragraph (4) of rule 11 of the *Advocates Remuneration Order* to extend time prescribed by sub paragraph (1) and (2) of the same rule within which to give notice of objection to the decision on taxation and to file a reference to a Judge in respect of such taxation. In exercise of its discretion to file a reference out of time, a court has to be satisfied that the omission to file the same within time was excusable. In other words, there has to be a plausible explanation for the delay in filing the reference within the statutory period. The Applicants herein faulted the Taxing Master for what they termed as failure to supply reasons for the taxation as requested by the Respondents/Applicants vide both the Notice of objection and a letter requesting for reasons.
8. Paragraph 11(1) and (2) of the *Advocates Remuneration Order* 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 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.”



9. I have had the opportunity to peruse the ruling of the Taxing Master dated 02/10/2024 and note that it contains both the reasoning and justification for the taxation of the respective items in the bill of costs. I have also considered the Notice of Objection and the applicant's letter requesting reasons for the decision. From the record, there is no indication of a direct response to the said letter. However, it is my view that the ruling itself sufficiently sets out the reasons for the taxation/decision but a brief response by the Taxing Master referring the Applicants to the ruling would have sufficed. See the case of *Republic v. Kenyatta University & Another Ex Parte Wellington Kibato Wamburu* [2018] eKLR, where the court observed that a party cannot insist on being supplied with reasons already contained in the ruling.
10. Further, the Applicant's insistence on strict compliance with procedural steps, particularly in the face of a clear and reasoned ruling, is superficial and does not promote the oxygen principles and the provisions of Article 159(2)(d) of the *Constitution*. The court process must not be sacrificed at the altar of procedural rigidity. The law is not a straightjacket, and parties are expected to act reasonably and with candour. It is my considered view that the delay in the matter could have been avoided had the Applicants referred themselves to the ruling which was self-explanatory and addressed the points in issue.
11. For the foregoing reasons, the I find that the Applicants' Chamber Summons application dated 23/04/2025 is merited.
12. As for the chamber summons by the Petitioners dated 04/11/2024 which are ideally a reference to the taxing masters ruling and having allowed the Applicants in the previous application to file their reference, it is my considered view that the issues raised by the Petitioner in the said chamber summons would be best handled jointly as the court considers the intended reference by the Respondents as allowed above.
13. In the end I make the following orders in disposition;
 - a. The Respondents, for avoidance of doubt the County Government of Bungoma and Kibabii University are hereby granted leave to file a Taxation Reference to this Court against the Ruling of the assessed costs delivered on 2nd October, 2024.
 - b. The Respondents/Applicants shall pay the requisite fees for the objection to the Taxing Officer and the Application for Reference annexed to the chamber summons within 14 days of this ruling.
 - c. The matter shall thereafter be set down for compliance with the said orders and further directions.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 10TH DAY OF JULY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Wangila for the Respondent
2. M/s. Nyakoe for the Petitioner.



3. Bett C/A.

