



Chelimo v Marigat Group Ranch & 4 others (Environment & Land Miscellaneous Case E006 of 2022) [2024] KEELC 406 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEELC 406 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND MISCELLANEOUS CASE E006 OF 2022**

**EO OBAGA, J
FEBRUARY 1, 2024**

BETWEEN

KABON CHELIMO APPLICANT

AND

MARIGAT GROUP RANCH 1ST RESPONDENT

COUNTY GOVERNMENT OF BARINGO 2ND RESPONDENT

CHIEF LAND REGISTRAR 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. This is a ruling in respect of a chamber summons dated 12.9.2023 which seeks the following orders:-
 1. That the matter herein be certified urgent.
 2. That notice to show cause dated 18th July, 2023 be set aside pending the hearing and determination of this reference.
 3. That the decision of the taxing officer as evidenced in the ruling delivered on 12th Day of May, 2023 with respect to items 1,2,3 to 10, 11 to 47 in the bill of costs dated 22nd April, 2022 be set aside and be taxed afresh by another taxing master.
 4. That the Honorable court grants any other order or relief that it deems fit to grant.
 5. That cost of this application be provided for.
2. The application is supported by an affidavit sworn on 12.9.2023 by counsel for the Applicant. The Applicant contends that the Applicant has been served with Notice to show cause dated 18.7.2023



- requiring her to attend court on 13/7/2023 which date falls on a recess. The Applicant further contends that she was not served with any documents in support of the bill contrary to procedure.
3. The Applicant further states that there are no receipts on record in respect of items 11 to 47 of the bill of costs and that the bill of costs contravenes order 21 Rule 9 of the Civil Procedure Rules. She therefore argues that the ruling delivered on 12.5.2023 was erroneous and ought to be re-assessed as it is excessive.
 4. The Applicant further contends that she is an elderly lady of over 70 years and has a legitimate expectation over the land in issue which is active before Kabarnet Magistrate's court.
 5. The Applicant's application is opposed by the 1st Respondent based on grounds of opposition dated and filed in court on 12.10.2023 and a replying affidavit sworn on 12.10.2023. The 1st Respondent contends that the application is bad in law as the reference was filed out of time which is contrary to Rule 11 of the Advocates Remuneration Order. The 1st Respondent therefore argues that the application is an abuse of the process of court as this court has no jurisdiction to entertain the same.
 6. The 1st Applicant further contends that the reference was filed four months after taxation of costs. In the alternative, the 1st Respondent contends that if this court were to entertain the reference let the court find that the taxing officer applied his discretion correctly and proceed to dismiss the reference.
 7. The court directed parties to file written submissions. The Applicant did not file any submissions. It is only the 1st Respondent who filed submissions. I have considered the Applicant's application as well as the opposition to the same by the 1st Respondent. I have also considered the submissions by the 1st Respondent. The only issue for determination is whether there is a proper reference worthy consideration.
 8. The ruling of the taxing officer was delivered on 12.5.2023. As per Rule 11(1) of the Advocate's Rules, the Applicant was supposed to write to the taxing officer within 14 days indicating the items being objected to. In the instant case the Applicant did not write to the taxing officer asking for reasons on the disputed items. This being the case, there is no proper reference before me for determination.
 9. It is apparent from the supporting affidavit that the Applicant was not keen on filing a reference. She was jolted into action by the Notice to show cause. This is also evident from her quest to have this matter stayed until the matter before Kabarnet Magistrate's court is determined.
 10. In the circumstances, I find that as the reference was filed without following the laid down procedure, the same is incompetent. It is also an abuse of the process of court to ask that this matter be put in abeyance pending determination of a matter pending before a magistrate's court at Kabarnet. I proceed to dismiss the application dated 12.9.2023 with costs to the 1st Respondent.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 1ST day of FEBRUARY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

M/s Moraa for 1st Respondent.

Court Assistant –Brian

E. O. OBAGA

JUDGE



1ST FEBRUARY, 2024

