



**Santamo & 2 others v Saidimu & another; Attorney General & another
(Interested Parties) (Environment and Land Miscellaneous (Reference)
Application E026 of 2023) [2025] KEELC 4173 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4173 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

**ENVIRONMENT AND LAND MISCELLANEOUS
(REFERENCE) APPLICATION E026 OF 2023**

MD MWANGI, J

MAY 22, 2025

**IN THE MATTER OF THE OBJECTIONS TO TAXATION OF PARTY
AND PARTY OF COSTS UNDER RULE 11 (2) AND (4) OF THE
ADVOCATES (REMUNERATION) ORDER 2014 AS AMENDED**

AND

IN THE MATTER OF SECTION 51(2) OF THE ADVOCATES ACT

AND

IN THE MATTER OF KAJIADO ELC MISCELLANEOUS APPLICATINO NO. E019 OF 2022

BETWEEN

MUTERO SANTAMO 1ST APPLICANT

MAGEI SANTAMU SENGE 2ND APPLICANT

JOSEPH SANTAMU 3RD APPLICANT

AND

RAMPAI OLE SAIDIMU 1ST RESPONDENT

LYSAJOY AUCTIONEERS 2ND RESPONDENT

AND

THE HON ATTORNEY GENERAL INTERESTED PARTY

THE DISTRICT LAND REGISTRAR, KAJIADO INTERESTED PARTY



RULING

(In respect of the chamber summons dated 11th October 2023 seeking leave of the court to enlarge or extend time for lodging a reference and or objections against the ruling of the taxing officer, setting aside, review or vacation of the ruling of the taxing officer and remission of the bill of costs dated 2nd May 2022 to a different taxing officer for fresh taxation)

Background

1. The application before me is an “all in one” application seeking enlargement/extension of time for lodging a reference and or objections against the ruling of the taxing officer, setting aside/review or vacation of the ruling of the taxing officer delivered on 23rd November 2022 and the remission of the bill of costs dated 2nd May 2022 to a different taxing officer for a fresh taxation. The application is premised on the grounds on the face of it and on the affidavit of one Mutero Santamo sworn at Kajiado on 11th October 2023.
2. The Applicants assert that the certificate of costs was not adopted as a judgment of the court and the same is therefore incapable of being executed as is. Further, the 1st respondent’s suit against the applicants which gave rise to costs was not successful. Consequently, the application for execution was irregular, null and void.
3. It is the applicants’ claim that they were neither served with the bill of costs nor the notice of taxation. They only came to know about the outcome of the taxation after the 2nd respondent visited their homes and proclaimed their properties. The applicants therefore plead that the failure to file the reference on time was inadvertent in view of the foregoing explanations.
4. The applicants contend that the decision of the taxing officer was based on errors of principle.

Response by the 1st respondent.

5. The 1st respondent’s response to the reference was by way of a preliminary objection dated 29th April 2024 whereby the 1st respondent raised three issues as follows:-
 - a. The application raises issues which can only be determined on appeal whereas the court having delivered its judgment in Miscellaneous Civil Application No. 18 of 2018 was rendered functus officio hence cannot concern itself with those issues.
 - b. The applicant has not sought leave of the court to come on record after judgment.
 - c. The application has been filed without leave of the court.
6. Neither the 2nd respondent nor the interested parties filed any response to the reference.

Directions by the court.

7. The directions by the court given way back on 28th October 2024, were that the application be canvassed by way of written submissions. Only the applicants filed submissions. The 1st respondent despite extension of time given to allow him file submissions did not comply. The other parties too did not comply. I have had the opportunity to read the submissions by the applicants which form part of the record of this court.



Issues for determination.

8. Having carefully considered the reference and the response by the 1st respondent as well as the submissions by the applicants, the following issues arise for determination;
 - a. Whether this court has the jurisdiction to entertain the reference and or the application seeking extension of time to file the reference by the applicants.
 - b. Whether the applicants are entitled to extension of time.
 - c. Whether dependent on (b) above, the reference by the applicants is merited.
 - d. Whether the applicants are entitled to the orders sought.

Analysis and determination.

A. Whether the court has the jurisdiction to entertain the reference or the application seeking extension of time to file the reference by the applicants.

9. The court dealing with a similar issue in the case of Cecil G. Miller and Company Advocates –vs- Parinsharrif & 3 others (2012) eKLR, (Odunga –J), cited with approval the decision by Ringera –J (as he then was) in Re: Leisure Lodges Limited Nairobi (Milimani) HCWC No. 28 of 1996, to the effect that;

“A party who is aggrieved by any decision of the taxing officer whether interlocutory or final and whether it be on quantum awarded on the bill as a whole or any items thereof has a recourse to the High Court by way of a reference under paragraph 11 of the Advocates Remuneration Order.”

10. The application before me arises out of a taxation of a party and party bill of costs. The option available to the applicants, who were aggrieved by the decision of the taxing officer is a reference under paragraph 11 of the Advocates Remuneration Order, and not an appeal as alleged by the 1st respondent in his preliminary objection. They seek leave of the court to file the reference out of time under the provisions of paragraph 11 of the Advocate Remuneration Order.
11. This court has the requisite jurisdiction to entertain the application by the applicants and will therefore proceed to consider the other issues identified in this matter.

B. Whether the applicants are entitled to extension of time.

12. In addressing myself to this issue, I will make reference to the Supreme Court of Kenya decision in the case of Salat- vs- IEBC & 7 others (2014) eKLR, where the court laid down the principles to be considered in an application for extension of time. The court stated that,

“Discretion to extend time is indeed unfettered but it is incumbent upon the applicant to explain the reasons for the delay in making the application for extension and whether there were extenuating circumstances that could enable the court to exercise discretion in favour of the applicant. In doing so, the following principles are applicable thus;

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.



- ii. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court.
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis.
 - iv. Where there is a reasonable (cause) for the delay, (the same should be expressed) to the satisfaction of the court.
 - v. Whether there will be any prejudice suffered by the respondents if extension is granted.
 - vi. Whether the application has been brought without unreasonable delay; and
 - vii. Whether in certain cases like election petitions, public interest should be a consideration for extending time.”
13. The explanation by the applicants is that they were neither served with the party and party bill of costs nor the taxation notice. They allege that they only became aware of the decision on taxation when auctioneers went to their respective homes and proclaimed their properties in execution (of the costs). The assertion by the applicants has not been controverted by the respondents and the interested parties.
14. The right of a party to be heard before a judgment or an order affecting him is sacrosanct. The Court of Appeal in *James Kanyiita Nderitu & another –vs- Marious Philotas & another*, (2016) eKLR, emphasized on the point and adopted the holding of the Supreme Court of India in *Sangram Singh – vs- Election Tribunal*. Koteh Air 1955 SC 664 at 711, where the court had stated that;
- “There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”
15. The explanation by the applicants is justification enough to allow the court exercise its discretion in their favour and extend the time for them to file their reference out of time. Since their reference is already filed it shall be deemed as duly filed.

C. Whether the reference by the applicants is merited

16. The court in the case of *First American Bank of Kenya –vs- Shah & Others* (2002) EALR 64, pronounced the principles that may justify the High Court to interfere with the decision of a taxing officer. Ringera –J (as he then was) at Page 69 thereof stated that;
- “This court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors...some of the relevant factors include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge...”



17. In my view, the reference herein raises one fundamental question i.e. whether the judgment upon which the party and party bill of costs in question was based on had indeed awarded costs against the applicants.
18. The judgment of the court in ELC Miscellaneous Number 18 of 2018 was delivered on 13th day of October 2021 by Lady Justice Christine Ochieng. In respect to the applicants herein who were the 2nd, 4th and 5th respondents in the case, the learned judge made the following findings;

“I note the ex parte applicant sought for orders of prohibition against the 2nd, 4th and 5th respondents who are not public officials. It is trite that remedy of judicial review is only available to a party against actions of a public official. I opine that the ex parte applicant has a remedy to seek for restraining orders against the said respondents in a civil suit. In the circumstances, I will decline to grant the prohibition orders as sought. Based on my analysis above, I find the notice of motion dated 17th September 2020 partially merited...”
19. The Learned Judge proceeded to issue an order of mandamus against the 1st respondent. She further issued an order that;

“The costs of this application are awarded to the ex parte applicant.”
20. The learned judge did not clarify the order on costs; whether it was against all the respondents jointly and severally or whether it was against the 1st and 3rd respondents. This is an issue that the ex parte applicant ought to have sought clarification/interpretation on before proceeding to file his bill of costs.
21. It is trite that costs are awarded at the discretion of the court. The provisions of Section 27 of the *Civil Procedure Act* provide that costs follow the event. By ‘event’ is meant the result or outcome of the legal action or proceedings as explained by the Supreme Court in the case of Jasbir Rai Singh -vs- Tarchalan Singh (2014) eKLR. The Supreme court of Kenya stated that,

“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”. The effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails. But if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously exercised discretion of the court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties prior to, during and subsequent to the actual process of litigation...”
22. Guided by the above discourse, it would be safe logical and reasonable to interpret that the Learned Judge meant that the costs would be payable to the ex-parte applicant by the 1st respondent and ultimately the 3rd respondent against whom the ex-parte applicant’s case was successful.
23. With this finding, I would set aside the ruling of the taxing officer in as far as it was against the applicants herein in its entirety. The ex parte applicant is therefore at liberty to execute the taxed costs as against the 1st and 3rd respondents in ELC Miscellaneous 18 of 2018 only, in accordance with the law.
24. In as far as the costs of this application are concerned, this court exercising its discretion and having considered the circumstances that led to the filing of this application directs that each party bears its own costs.

It is so ordered.



DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Nairi for the Applicants

Mr. Ochieng' for the 1st Respondent

N/A by the 2nd Respondent and the Interested Parties

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

