



**Chirchir v Rono (Environment & Land Case 79 of 2018)  
[2024] KEELC 3518 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3518 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 79 OF 2018**

**MC OUNDO, J**

**MAY 2, 2024**

**BETWEEN**

**JULIUS CHERUIYOT CHIRCHIR ..... APPLICANT**

**AND**

**DAVID KIPKEMOI RONO ..... RESPONDENT**

**RULING**

1. Before me for determination is a Notice of Motion dated 8<sup>th</sup> August, 2023 brought pursuant to the provisions of Section 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act*, Order 10 Rule 11, Order 22 Rule 22 (2) and 51 Rule 1 and 4 of the *Civil Procedure Rules 2010* and *Civil Procedure Act* Cap 21 Laws of Kenya and all enabling provisions of the law in which the Plaintiff/Applicant seeks for orders to stay the execution of the certificate of taxation dated 15<sup>th</sup> June, 2023 and thereafter the same be set aside. The Applicant further seeks for leave to file the instant reference and to be at liberty to apply for further orders and/or directions as the court may deem fit and just to grant. Finally he also seeks for costs of the instant application.
2. The Plaintiff/Applicant's application was supported by the grounds therein and the Supporting Affidavit of an even date sworn by Julius Cheruiyot Chirchir the Applicant herein, who deponed that he had been served with a letter dated 28<sup>th</sup> July, 2023 together with the Certificate of Taxed Costs dated 15<sup>th</sup> June, 2023 and a Decree dated 14<sup>th</sup> July, 2022 demanding payment within ten (10) days. That the said Decree dated 14<sup>th</sup> July, 2022 had been irregularly issued since the Party and Party Bill of Costs had not been served upon his Advocates on record. Further, that he had not been invited to court for the taxation of the said Bill of Cost hence the same should be reviewed and varied in the interest of justice.
3. That the Bill of Costs had been too high and exaggerated hence the same should be reviewed since he had been condemned unheard. That the Defendant had commenced execution of the Decree without following the procedure of law since he had not been served with entry of judgement.



4. That if the orders sought for herein were granted, the Defendant/Respondent would not be prejudiced. That on the other hand, if the same were not granted he would be prejudiced since he had been condemned unheard in breach of the principles of natural justice which requires that each party in a case be accorded an opportunity to be heard before a decision is made hence the rule of law and due process had been violated.
5. The Defendant/Respondent did not file any response to the instant Application.
6. On 7<sup>th</sup> December, 2023, directions were given for the application to be canvassed by way of written submissions in which only the Defendant/Respondent had complied and filed their written submissions dated 19<sup>th</sup> January, 2024 in opposition of the instant application framing three issues for determination to wit; -
  - i. Whether the court should interfere with the discretion of the taxing officer.
  - ii. Whether the Party and Party Bill of Costs should be reassessed by the Court.
  - iii. Who pays the cost of the inference?
7. On the first issue for determination, the Respondent hinged their reliance on a combination of decisions in the case of *Peter Muthoka & Another v Ochieng & 3 others* [2019] eKLR, *Joreth Ltd v Kigano and Associates* [2002] E.A 92 at 99 and *Republic v Minister for Agriculture & 2 others ex parte Samuel Muchiri W. Njuguna* [2006] eKLR to submit that there was no evidence that the Taxing Master had applied the wrong principles and that taxation was entirely a matter of opinion based on experience.
8. The Respondent's submissions on the second issue for determination was that the Party and Party Bill of Costs had been taxed to scale. That the Applicant had not demonstrated otherwise and as such, there was no reason to disturb the award of costs. That the application dated 8<sup>th</sup> August, 2023 lacked merit and the same should be dismissed with costs.

#### **Determination.**

9. I have considered the application herein wherein the Applicant seeks for orders to stay the execution of the certificate of taxation dated 15<sup>th</sup> June, 2023 and the same be set aside. The Applicant further seeks for leave to file the instant reference and to be at liberty to apply for further orders and/or directions as the court may deem fit and just to grant. Finally he also seeks for costs of the instant application.
10. I have noted that there was no response to the said application by way of a Replying Affidavit but instead the Respondent decided to file their submissions as herein above captioned in opposition to the said application.
11. The supreme court in the case of *Gideon Sitelu Konchellab v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR had held as follows;
 

“A Replying Affidavit is the principal document wherein a respondent's reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1<sup>st</sup> Respondent on 17<sup>th</sup> August, 2018 are of no effect.”
12. In view of the holding by the Supreme Court as herein above stated, which decision is binding to this court, I find that the Respondent's submission is of no effect in the circumstance.



13. Secondly it is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an applicant who fails to file his submissions on an application as ordered by the court is deemed as a party who has failed to prosecute his application and therefor that application is liable for dismissal. The filing of submissions having been ordered, and this court having extended time for compliance on several occasions without compliance, the failure by the Applicant to exercise the leave granted to them to file written submissions clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on the Applicant's part in the prosecution of the matter.
14. The Court of Appeal in *Rowlands Ndegwa and 4 Others v County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties)* [2020] eKLR, citing with approval the decision of the High Court in, *Winnie Wanjiku Mwai v Attorney General & 3 others* [2016] eKLR, observed as follows:
- “With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....”
15. Directions having been issued for the mode of hearing of the application, and there having been no compliance, I am persuaded to dismiss the main motion, which I now do, with no costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 2<sup>ND</sup> DAY OF MAY 2024**

**M.C. OUNDO**

**ENVIRONMENT & LAND**

**JUDGE**

