



REPUBLIC OF KENYA



Kabutha v Gikanga & another (Environment and Land Miscellaneous Application E001 of 2024) [2024] KEELC 4051 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4051 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2024**

YM ANGIMA, J

MAY 2, 2024

BETWEEN

HELLEN MURINGE KABUTHA APPLICANT

AND

PETER RUGU GIKANGA 1ST RESPONDENT

MILKA WACERE GIKNAGA 2ND RESPONDENT

RULING

A. Applicant's Application

1. Vide a chamber summons dated January 23, 2024 grounded upon rule 11(4) of the [Advocates Remuneration Order](#), Sections 3 & 3A of the [Civil Procedure Act](#) (Cap.21), and all other enabling provisions of the law the Applicant sought the following orders:
 - a. Spent;
 - b. That this honourable court be pleased to issue an order of stay of execution of the certificate of costs dated 6th December, 2023 pending the hearing and determination of this application and reference.
 - c. That this honourable court be pleased to issue an order of extension of time for the Applicant to file a reference out of time.
 - d. That the costs of this application be borne by the Respondent.
2. The application was based upon the grounds set out on the face of the summons and the contents of the supporting affidavit sworn by the Applicant on 23.01.2024 and the annexures thereto. It was contended that the taxing officer had issued a certificate of stated costs in Nyahururu PMCC No.189 of 2004 without taxing any bill of costs and without giving the Applicant an opportunity to be heard



on the matter. He contended that he only became aware of the issuance of the said certificate on January 22, 2024 hence he was desirous of filing a reference out of time against the decision of the taxing officer. The Applicant also sought a stay of execution of the order for costs on the basis that she had been threatened with execution for recovery of the costs.

3. The application was also supported by a supplementary affidavit sworn by the Applicant's advocate on record, Mr. Seth Ojienda on January 31, 2024. The advocate averred that his chambers were closed between December 14, 2023 until January 15, 2024 hence he only became aware of the impugned certificate of stated costs after re-opening his office.

B. Respondents' Response

4. The Respondents filed a statement of grounds of opposition dated February 19, 2024 objecting to the application on several grounds. First, that costs are merely assessed and not taxed before subordinate court hence the certificate of stated costs did not arise from any taxation. Second, that it shall not be possible for the Applicant to obtain any reasons for taxation from the subordinate court since there was no taxation in the first place. Third, that the assessment of costs by the subordinate cannot validly be challenged through a reference. Fourth, that the application was misconceived, bad in law and otherwise an abuse of the court process.

C. Directions on Submissions

5. When the application was listed for inter partes hearing, it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions on the application. The record shows that the Applicant filed written submissions dated January 31, 2024 whereas the Respondents filed theirs dated 19.02.2024.

D. Issues for determination

6. The court has perused the Applicant's chamber summons dated 23.01.2024, the Respondents' grounds of opposition dated February 19, 2024 as well as the material on record. The court is of the view that the following are the key issues which arise for determination herein:
 - a. Whether the Applicant has made out a case for extension of time within which to file her intended reference.
 - b. Whether the Applicant has made out a case for the grant of a stay of execution.
 - c. Who shall bear costs of the application.

E. Analysis and Determination

a. Whether the Applicant has made out a case for extension of time within which to file her intended reference

7. The court has considered the material and submissions on record on this issue. It is evident that the Applicant was aggrieved by the certificate of stated costs dated December 6, 2023 issued by the subordinate court. The Applicant was aggrieved because she was not served with any bill of costs for taxation before the certificate was issued. It was also obvious that the Applicant intends to file a reference under paragraph 11 of the [*Advocates Remuneration Order*](#).



8. Paragraph 11 of the said Order stipulates 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.
- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
- (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; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days’ notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

9. The court is aware that there is no provision in law for the filing of a bill of costs in matters concluded by the subordinate court for it to tax such a bill in the same manner as a deputy registrar would tax a bill of costs filed before the superior court. The Applicant did not refer the court to any statutory or precedent authority to support her position that the Respondents were obligated to file a bill of costs for taxation. It is evident that all the authorities cited by the Applicant related to taxation of costs before superior courts.

10. The court agrees with the Respondents’ grounds of opposition and submissions to the effect that costs before the subordinate courts are usually assessed administratively by the court and that such costs are never taxed and a certificate of taxation issued as happens before the superior courts. Indeed, what the subordinate court issued to the Respondents was a certificate of stated costs and not a certificate of taxation. It is also obvious that in the absence of a bill of costs and a taxation the Applicant cannot possibly obtain reasons for the “taxation” from any taxing officer of the superior courts.

11. The court is thus of the opinion that the Applicant’s application for leave to file a reference under paragraph 11 of the Advocates Remuneration Order is misconceived since the same does not lie in law. The said application is certainly bad in law but not an abuse of the court process as submitted by the Respondents. As a result, the court finds and holds that the Applicant has not made out a case for an extension of time to file her intended reference out of time.

b. Whether the Applicant has made out a case for the grant of a stay of execution

12. The court has considered the material and submissions on record on this issue. It is evident from the application that the Applicant was seeking a stay of execution to enable her pursue her intended reference against the certificate of stated costs issued by the subordinate court. The court has already found and held that the Applicant is not entitled to file a reference against the said certificate of stated costs and that such reference does not lie in law. It would, therefore, follow that the Applicant is not entitled to a stay since such stay would not serve the intended or any other useful purpose.



c. Who shall bear costs of the application

13. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the Civil Procedure Act (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the Respondents shall be awarded costs of the application to be taxed and certified by the taxing officer of this court. Hopefully, the Applicant shall ultimately have a chance to receive an itemized bill of costs under the Advocates Remuneration Order.

F. Conclusion and Disposal Order

14. The upshot of the foregoing is that the court finds no merit in the Applicant’s application seeking extension of time to file a reference and for stay of execution. As a consequence, the Applicant’s chamber summons dated January 23, 2024 is hereby dismissed with costs to the Respondents.

It is so ordered.

RULING DATED AND SIGNED AT NYANDARUA THIS 2ND DAY OF MAY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Ayugi holding brief for Mr. Seth Ojienda for the Applicant

Mr. Kinyua Njogu for the Respondents

C/A - Carol

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Y. M. ANGIMA

JUDGE

