



**Ngingo t/a Muchangi Nduati & Co Advocates v Ndege & 2 others
(Environment and Land Miscellaneous Application E034 of 2023)
[2024] KEELC 5970 (KLR) (16 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 5970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E034 OF 2023
CA OCHIENG, J
SEPTEMBER 16, 2024
IN THE MATTER OF THE ADVOCATES ACT
AND
IN THE MATTER OF THE ADVOCATES-CLIENT BILL OF COSTS
IN THE MATTER OF REFERENCE FROM A RULING OF THE
TAXING OFFICER AT ENVIRONMENT AND LAND AT MACHAKOS**

BETWEEN

**MUCHANGI NDUATI NGINGO T/A MUCHANGI NDUATI & CO
ADVOCATES APPLICANT**

AND

JENNIFER WAITHIRA NDEGE 1ST RESPONDENT

MANWA BWOSIEMO MAGARA 2ND RESPONDENT

AL RUHIA ESTATES LIMITED 3RD RESPONDENT

RULING

1. What is before Court for determination is the Applicant's Notice of Motion Application dated the 30th November, 2023 brought pursuant to Rule 11 of the Advocates Remuneration Order and Order 51 Rule 4 of the *Civil Procedure Rules*. The Applicant seeks the following Orders:-
 1. The Taxation Order made on 22nd November, 2023 be set aside.
 2. The Taxation on items 1 and others of the Applicants' Bill of Costs dated 6th May, 2022 be revised/retaxed by the Honourable Court.



3. Costs be provided for.
2. The Application is premised on the grounds on the face of it, where the Applicant claims the reasons given by the Taxing Officer for taxing off the various amounts on the particularized items in the Bill of Costs was a clear and deliberate misdirection on her part and amounted to a grave error in principle warranting the setting aside of the said Taxation Order. Further, that the Taxing Officer in taxing the instructions fees to the tune of over Kshs. 360,000 while the actual value of the parcel in question was well defined in the Sale Agreements dated the 16th November, 2009 and 22nd January, 2020, which formed part of the Plaintiff's list of documents in ELC No. 211 of 2011, was a deliberate misdirection.
3. The Respondents opposed the instant Application by filing a Replying Affidavit sworn by Manwah Bwosiemo Magara, where he deposes that the Application is incompetent, vexatious and misleading the court. He contends that it is the Advocate who had withdrawn his Bill of Costs in ELC 25 of 2020. He argues that the Advocate did absolutely nothing for five (5) years and attended Court only once for the hearing on 8th March, 2020. He contends that the Advocate had not rendered any professional services for the amount of Kshs. 424,905 that was awarded to him. Further, that the Taxing Officer failed to take note of the payments made through Mpesa. He avers that the Advocate misled the court because he filed Machakos ELC Miscellaneous No. 13 of 2024 and ELC Misc. 25 of 2020. He states that the Applicant is misleading the Court because he had filed Machakos Misc. 25 of 2020 which was struck off. He explains that the Certificate of Taxation cannot be authenticated because the two Rulings dated 10th November, 2022 and 15th December, 2022 respectively are of ELC 2010 of 2011.
4. The Application was canvassed by way of written submissions.

Analysis and Determination

5. Upon consideration of the instant Notice of Motion Application including the Replying Affidavit and submissions, the only issue for determination is whether this Application is merited.
6. The Applicant/Advocate has filed this reference seeking to review the Taxing Officer's Award of Instructions fees claiming there was an error in principle. The Respondents have vehemently opposed the reference insisting there is a mix up with another aforementioned Miscellaneous Cause.
7. Upon perusal of the instant Miscellaneous Application, I note the Applicant did not annex the impugned Taxing Officer's Ruling nor the Bill of Costs that is being challenged. Further, the Applicant did not even explain in an Affidavit how the Taxing Officer had erred in principle as claimed. I opine that it was incumbent upon him to present all the materials before the Court, to enable it make a proper determination of the Reference. However, it is my considered view that the instant Miscellaneous Cause as filed, is incomplete.
8. From the foregoing, I find the Notice of Motion Application dated November 30, 2023 incompetent and will proceed to strike it out but make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 16TH DAY OF SEPTEMBER, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Nduati for Applicant

No appearance for Respondent



