



REPUBLIC OF KENYA



Pere v Gicheru & another (Environment & Land Miscellaneous Case E071 of 2021) [2024] KEELC 7291 (KLR) (4 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7291 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E071 OF 2021
MN GICHERU, J
NOVEMBER 4, 2024**

BETWEEN

MEPUKOI PERE APPLICANT

AND

SAMUEL GICHERU 1ST RESPONDENT

ENDOLVINE INVESTMENT LIMITED 2ND RESPONDENT

RULING

1. This ruling is the Chamber Summons dated 21/6/2022. The summons which is by applicant is brought under Rule 11 of the *Advocates Remuneration Order* 2014, Sections 3A and 95 of the *Civil Procedure Act*, Order 51 rule 1 *Civil Procedure Rules* and all other enabling provisions of law.
2. The motion seeks two orders.
 1. The setting aside of the decision of the Deputy Registrar delivered on 13/6/2022 awarding the applicant Kshs. 221, 271.28 only as taxed costs.
 2. Costs of the summons.
3. The summons is based on 15 grounds and is supported by the affidavit of W.C.O Ochieng advocate, dated 21/6/2022 which has two annexures which are the certificate of costs dated 1/6/2021 and a copy of the ruling dated 13/6/2022.
4. The gist of the above material is as follows. The Hon. Deputy Registrar in her ruling on 13/6/2022 erred in principle as follows. Firstly, the instruction fees was reduced by 65%. Secondly, the getting up fees was reduced by Kshs. 32, 833.67. Thirdly, items 9 and 10 of the Bill of Costs dated 22/10/2021 should have been Kshs. 3, 800/-each but they were reduced to Kshs. 1, 100/-. Fourthly, instead of awarding Kshs. 50/= per folio in item 15, the Deputy Registrar awarded only Kshs. 50/- for the entire document which had 28 folios. Fifthly, the amount awarded under paragraph 17 was Kshs. 2, 300/-



instead of Kshs. 2, 400/-. The 6th, 7th and 8th grounds are similar to the fourth ground in that they concern the pages and folios. Nine, there is an error under paragraph 30 of the ruling in that Kshs. 2,000/- was awarded instead of Kshs. 3, 955/-. Ten, the court fees should have been Kshs. 45, 515/-. Eleven, the amount awarded for attendances fell short by 92, 300/-. Finally, the total awarded should have been Kshs. 500, 524.95 and not the awarded amount of Kshs. 221, 271. 28/=.

5. The motion is opposed by the respondent who has sworn a replying affidavit dated 9/5/2024 in which he replies as follows. Firstly, the suit proceeded as undefended so the instruction fees was assessed correctly. The same goes for the getting up fees as assessed at Kshs. 30, 833/-. Finally, the Deputy Registrar has discretion to tax and this discretion extends to disallowing items which she finds undeserving of any award.
6. I have carefully considered the summons in its entirety including the grounds, the annexures and affidavits by both sides. I find that the following issues arise.
 - i. Whether the applicant has exhausted the procedure outlined in paragraph 11 of the [Advocates Remuneration Order](#).
 - ii. Whether this court should entertain the summons dated 21/2/2022 before the applicant complies with paragraph 11 of the [Advocates Remuneration Order](#).
7. On the first issue, I find that there is no evidence of compliance with paragraph 11 of the [Advocates Remuneration Order](#). Neither the supporting affidavit dated 21/6/2022 nor the record show compliance with the said paragraph. The paragraph provides as follows.
 - 11 (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”.
8. There is no evidence that this procedure was complied with. The ruling dated 13/6/2022 makes no mention of the requisite notice in writing required by paragraph 11 (1) of the [Advocates Remuneration Order](#). The paragraph makes it mandatory for the taxing officer to record and forward to the objector the reasons for his/her decision. It says “...the taxing officer shall forthwith record and forward...”
9. On the second issue, I find that this court should not entertain the summons dated 21/2/2022 before the applicant complies with paragraph 11 of the [Advocates Remuneration Order](#). The reason for making this finding is that the law sets out the procedure to be followed by any party objecting to the decision of the taxing officer. This procedure includes timelines. This court would only have jurisdiction if the above procedure was complied with.

For the above stated reasons, I find no merit in the Chambers Summons dated 21/2/2022 which I dismiss with costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF NOVEMBER 2024.

M.N. GICHERU



JUDGE

