



Wanambisi v Paul Gicheru t/a Paul Gicheru & Co. Adv (Environment and Land Miscellaneous Application E011 of 2023) [2023] KEELC 18567 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18567 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2023
EC CHERONO, J
JULY 6, 2023

BETWEEN

TOM L. WANAMBISI APPLICANT

AND

PAUL GICHERU T/A PAUL GICHERU & CO. ADV RESPONDENT

RULING

- 1 The applicant, Tom L Wanambisi vide a Notice of motion dated April 12, 2023 seeks the following orders;
 1. (spent)
 2. That pending the hearing and determination of this reference, this Honourable Court be pleased to order that the execution of the respondent's bill of costs arising from taxing officer's ruling on assessment delivered on August 29, 2022 in Elc Misc Suit No E009 Of 2022 Paul Gicheru T/a Gicheru & Co Advocates V Tom L Wanambisi Be Stayed
 3. That The Decision Of The Assessed Costs In Elc Misc Suit No E009 Of 2022 Paul Gicheru T/a Gicheru & Co Advocates V Tom Wanambisi delivered on August 29, 2020 with respect of items 1, 2, 3 & 4 be set aside and taxed afresh by this Honourable Court.
 4. That costs of the application be provided for.
- 2 The application is supported by grounds apparent on the face of the said application and the affidavit of Faustine Juma Waswa Advocate. The application is further supported by annexures to the supporting affidavit. The application is opposed by the respondent vide a replying sworn by Birundi R Ondieki sworn on May 10, 2023. The said replying affidavit is further supported by numerous annexures thereto.



Applicant's Summary Of Facts

- 3 The applicant in his supporting affidavit deposed that whereas he is aware that the taxing master assessed costs and rendered himself on August 29, 2020 in ELC MISC SUIT NO E009 OF 2022 Between PAUL GICHERU T/S GICHERU & CO ADVOCATES V TOM L WANAMBISI, he is aggrieved by the said decision on grounds that the taxing master failed to take into account the scale of fees prescribed under schedule 6 of the Advocates (Remuneration Order amended 2009) in the award for items 1, 2, 3 & 4.
- 4 The applicant further deposed that the learned taxing master made serious errors in principle in taxing the said bill of costs and thereby arrived at the wrong decision. He further deposed that the said taxation is irregular and the decision of the learned Deputy Registrar ought to be set aside and the opposed items in the Respondent's bill of costs be taxed afresh.
- 5 While opposing the said application, the respondent in his replying affidavit sworn on May 10, 2023 stated that the applicant filed a similar reference on October 3, 2022 vide Bungoma ELC MISC E009 of 2022 whereby this Honourable court pronounced itself on the application in the first instance on October 6, 2022. He stated that this Honourable court issued further orders on the said application on December 20, 2022. Pursuant to this Court's orders on December 20, 2022, the applicant through his hitherto advocates gave a notice of the items objected to as taxed on December 28, 2022. The Respondent further deposed that the taxing officer pronounced herself on the notice calling for the reasons for taxation on February 5, 2023. He further deposed that despite the taxing master pronouncing herself on the reasons for taxation on the objected items, the applicant chose to sleep on his rights. He stated that the timeframe within which to file a reference application upon delivery of a ruling on taxation long expired on February 22, 2023 and that the applicant is guilty of laches as no leave has been sought and obtained to file the instant application out of time.
- 6 The Respondent further stated that the applicant wants this Honourable Court to set aside orders in a distinct reference file being Bungoma ELC MISC Suit No E009 of 2022, without any cogent reason and that the instant application is untenable in law and contravenes the doctrine of finality in litigation.

Analysis And Decision

- 7 I have considered the application dated October 3, 2022, the supporting affidavit, Grounds shown on the face of the said application and the replying affidavit. This application is brought as Reference from the decision of the taxing officer delivered on August 29, 2022 in ELC Misc Suit No E009 OF 2022 between Paul Gicheru P/A Gicheru & Company Advocates-v-Tom L Wanambisi. From the annexures to the supporting affidavit, the applicant had moved this Honourable Court vide Bungoma Misc Application No E009 of 2022 seeking numerous orders including stay of execution of the Certificate of taxation pending hearing and determination of the said Reference. The applicant also sought leave to enlarge time within which to file a reference against the decision of the Taxing Officer delivered on August 29, 2022. In a Ruling delivered on December 20, 2022, this Court granted leave to the applicant to give Notice in writing to the Taxing Officer of the items of taxation he was objecting to within 7 days. The Taxing Officer pronounced herself on the notice challenging the taxation vide directions issued/dated February 5, 2023.
- 8 Paragraph 11(1) and (4) of the [*Advocates Remuneration Order*](#) provides;
 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 to which he objects.



- (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 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 Paragraph 11(2) of the Advocates Remuneration Order provides as follows;
‘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 summons, which shall be served on all the parties concerned, setting out the grounds of his objection.’
- 10 From the provisions of the law, the Applicant/objector was required to lodge his reference within fourteen days from February 5, 2023. The applicant/Objector was also required to lodge his reference in the same reference file he had sought and obtained leave to enlarge time to give notice to the Taxing Officer of the items of taxation to which he objected being ELC-Misc Application No E009 of 2022.
- 12 It is not in dispute that the Taxing Officer gave the applicant/objector reasons for her decision on February 5, 2023. The applicant/objector was required to apply for reference before this Honourable court within fourteen days from 5th February 2023 when the reasons for decision was given by the Taxing Officer which terminated on February 22, 2023.
- 13 Instead of applying for reference before this Court within the stipulated period of fourteen days, the applicant waited until April 12, 2023 to make this application. Further, the applicant/Objector made the application for reference in a new reference file and not the reference file where he was granted leave for enlargement of time being ELC Misc Application No E009 of 2022. I also note that the applicant has not sought leave to bring the present application out of time
- 14 Since there is an existing reference case file No ELC Misc Application No E009 of 2022 in respect of the same parties involving the same subject matter, the presence application is a non-starter, incurably defective and an abuse of the court process.
- 15 The upshot of my finding is that the application for reference dated April 12, 2023 is defective, an abuse of the court process and a non-starter. Consequently, the said application is hereby struck out with costs to the respondent.

READ, DELIVERED AND SIGNED IN THE OPEN COURT AT BUNGOMA THIS 6TH JULY, 2023

HON. E.C.CHERONO

ELC JUDGE

In the presence of;

Mr Ogongo for the Respondent

Applicant/Advocate absent

Lusweti C/A

