



**Odhiambo v Ogutu (Environment and Land Miscellaneous Application
9 of 2021) [2022] KEELC 3527 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 9 OF 2021
AY KOROSS, J
JUNE 2, 2022
[FORMERLY KISUMU ELC MISC. REFERENCE 30 OF 2020]
IN THE MATTER OF THE MATTER OF THE ADVOCATES ACT CAP 16
AND
IN THE MATTER OF A REFERENCE UNDER RULE
11 OF THE ADVOCATES (REMUNERATION) ORDER**

BETWEEN

IRENE SAMUEL ODHIAMBO APPLICANT

AND

ANGELINA ANYANGO OGUTU RESPONDENT

RULING

The Applicant's Case And Submissions

1. Pursuant to the provisions of rule 11 (1) and (4) of the *Advocates Remuneration Order*, the applicant filed a chamber summons dated March 8, 2021 against the respondents seeking the following reliefs:
 - a. The honourable court do find that the taxing officer erred in law in taxing and allowing the bill of costs in the sum of Ksh 329,625/;
 - b. The honourable court do find that the bill of costs by the respondent dated July 29, 2019 was not drawn to scale;
 - c. The honourable court do find that the Hon Taxing Master misdirected himself in law and fact by taxing the bill of costs as drawn despite the figures therein being exaggerated;



- d. That consequent to granting prayers (a) to (c) above, the taxing master's decision of October 17, 2019 be set aside and this honourable court do direct that the bill of costs be placed for taxation afresh before any other magistrate other than Hon E N Wasike SRM and;
 - e. Costs be provided for.
2. The summons is supported by grounds set out on its face and on the supporting and supplementary affidavits of the applicant, Irene Samuel Odhiambo.
 3. She contended that she was not given adequate time to challenge the exaggerated bill of costs and that the Hon Taxing Officer erred in his assessment thereof. She urged the court to set aside and or vacate the decision of the Hon Taxing Officer and for her to be given an opportunity to respond to the bill of costs before a different taxing officer.
 4. The applicant's submissions dated March 18, 2022 were a rehearsal of the averments in the summons and affidavits and this court need not restate them.

The Respondent's Case And Submissions

5. Despite service, the respondent neither filed a response nor written submissions to the summons. Even if the summons is unopposed, this court has a duty in principle to determine the motion on its own merits and will as a matter of course grant the sought orders.

Analysis And Determination

6. I have carefully considered the applicant's summons and the only issue falling for determination is whether the motion is merited.
7. The reference is premised on paragraph 11 rule (1) and (2) of the [*Advocates Remuneration Order*](#) which reads; -
 - “(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 this objection”.
8. My understanding of this rule is that an objector [in this case the applicant] has to give notice of the items of taxation she is dissatisfied against within 14 days from the date of the taxing officer's decision. Upon requisition, the taxing officer is required to give his reasons forthwith and once that is done, the objector may then file a reference within 14 days from the receipt of the reasons. A cursory perusal of the court record does not demonstrate that the necessary steps of paragraph 11 were undertaken by the applicant. Was this shortfall fatal to the summons?
9. It is the considered view of this court that it has to carry out substantive justice without following procedural technicalities. It would be foolhardy for a taxing officer to issue reasons for his decision which would be more or less a replication of his ruling. This position was upheld in a line of court decisions including [*Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited*](#) [2012] eKLR,



Kinyua Muyaa & Co Advocates v Kenya Ports Authority Oensin Scheme & 8 others [2017] eKLR and the case *Ahmed Nassir v National Bank of Kenya Ltd* [2006] E A In the latter, the court stated thus;

“Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Hon Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of sub-rule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

10. Even if the reasons for the decision had not been proffered to this court. The summons that is before this court is bereft of annexures; the bill of costs that was handled by the Hon Taxing Officer and the ruling thereof have not been attached to any of her affidavits. References are akin to appeals and a judge is guided by the lower court record in order to interrogate the proceedings thereof before it conclusively makes findings and determination.
11. As it stands, this court has been denied this opportunity and at this juncture, it is not in a position to make a finding as to whether the Hon Taxing Officer erred in rendering its decision. This court cannot be expected to act in vain when the applicant has failed to avail to this court the impugned ruling and the taxed bill of costs. It is my finding that the summons is incompetent and not merited. It is trite law that costs follow the event and because the respondent did not participate in these proceedings, I will not award her costs.
12. In upshot I issue the following disposal orders;
 - a. The chamber summons dated March 8, 2021 is hereby struck out with no orders as costs.

DELIVERED AND DATED AT SIAYA THIS 2ND DAY OF JUNE 2022.

HON. A. Y. KOROSS

JUDGE

2/6/2022

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr. Kaingu for the applicant

N/A for the respondent

Court assistant: Ishmael Orwa

