



**Homa Bay County Government v Samuel Owino Nyauke t/a Aluoch Odera & Nyauke Advocates  
(Miscellaneous Application E050 of 2023) [2024] KEHC 12417 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
MISCELLANEOUS APPLICATION E050 OF 2023**

**KW KIARIE, J**

**OCTOBER 15, 2024**

**BETWEEN**

**HOMA BAY COUNTY GOVERNMENT ..... APPLICANT**

**AND**

**SAMUEL OWINO NYAUKE T/A ALUOCH ODERA & NYAUKE  
ADVOCATES ..... RESPONDENT**

**RULING**

1. The applicant moved the court through a Notice of motion dated 23<sup>rd</sup> November 2023. The applicant is seeking the following orders:
  - a. That this application be certified urgent and the same be heard ex-parte in the first instance.
  - b. That this honorable court be pleased to stay the execution of the ruling issued by the Registrar on 20<sup>th</sup> November 2023, pending hearing and determination of this application inter-parties.
  - c. That this honorable court be pleased to stay the execution of the ruling issued by the Registrar on 20<sup>th</sup> November 2023, pending hearing and determination of this application.
  - d. This honorable court be pleased to set aside the taxation proceedings and orders of 20<sup>th</sup> November 2023, together with any incidental and subsequent proceedings and orders thereafter.
  - e. That the advocate and client bill of costs herein dated 9<sup>th</sup> September 2022 be heard and determined on merit by involving the participation of the relevant parties to the bill of costs.
  - f. The costs of this application be provided for.
  - g. That the orders issued herein apply to *Homa Bay Miscellaneous Applications E053 of 2023, E056 and E057 of 2023*.



2. The application was premised on the following grounds:
  - a. The client/applicant was excluded from the proceedings and the procedure used to arrive at the Taxation.
  - b. That Client/Applicant was never granted an opportunity to interrogate the Bill of Costs filed by the applicant.
  - c. The outcome reached by the taxing officer was detrimental and prejudicial to the client/applicant's rights as it failed to consider the respondent's right to a fair hearing.
  - d. The application for taxation by the advocate/respondent offended the provisions of Section 45 of the *Advocates Act* and hence were nullity ab initio.
  - e. The ruling issued by the Taxing Officer is the product of an unfair process.
  - f. The respondent herein has been condemned unheard as not having been given an opportunity to participate in the taxation proceedings competently.
3. The respondent opposed the application on the following grounds:
  - a. That the application is bad in law.
  - b. The application lacks merit and abuses the court process.
  - c. The application is a non-starter, frivolous and vexatious.
4. On the 8<sup>th</sup> day of May 2024, the parties herein agreed to canvass the application dated the 23<sup>rd</sup> day of November 2023 by way of written submissions. Mr. Rigga, holding brief for Mr. Akello, sought twenty-one days to file the same. When the matter came up for mention on the 19<sup>th</sup> day of June 2024, Mr. Rigga sought to have fourteen days to comply. The prayer was granted, but the applicant was ordered to pay the court adjournment fees.
5. The parties appeared in court on 18<sup>th</sup> September 2024, but no submissions had been filed at the time, and when Mr. Akello was given until 11 a.m. to pay the court adjournment fees earlier ordered, he did not return to court.
6. The chronology of events in this application demonstrates the lack of seriousness on the part of the applicant's counsel.
7. When this matter went before the DR for taxation on November 9, 2023, the respondent informed the DR that the application dated September 5, 2022, had been served and an affidavit of service had been filed. It would appear the honourable DR was satisfied with the service. She proceeded to deliver the impugned ruling.
8. If the applicant wanted to challenge the ruling based on failure to attend the taxation due to non-service, the correct forum should have been before the DR. The DR would have interrogated the affidavit of service and ruled whether the service was proper.
9. If the applicant wanted this court to consider the issue of non-service seriously, a copy of the affidavit of service should have been attached and demonstrate how the service was improper. This was not done.
10. I, therefore, find that the application lacks merit. It is dismissed with costs.
11. The orders issued herein should apply to *Homa Bay Miscellaneous Applications E053 of 2023, E056 and E057 of 2023*.



**DELIVERED AND SIGNED AT HOMA BAY THIS 15<sup>TH</sup> DAY OF OCTOBER 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

