



**Njagi v Njeru & 2 others (Miscellaneous Application
E005 of 2024) [2025] KEELC 3912 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3912 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
MISCELLANEOUS APPLICATION E005 OF 2024**

**AK BOR, J
MAY 13, 2025**

BETWEEN

MICHAEL GICHOVI NJAGI APPLICANT

AND

FELISTA GATHONI NJERU 1ST RESPONDENT

JOSEPH NJERU MUKUTHU 2ND RESPONDENT

ACTING RESIDENT MAGISTRATE RUNYENJES 3RD RESPONDENT

RULING

1. The Applicant, Michael Gichovi Njagi, filed the application dated 7/3/2024 seeking leave to file an objection and a taxation reference against the ruling of the taxing officer delivered on 17/6/2019. He also sought to have the leave operate as stay of execution of the taxing officer's ruling and any other consequential proceedings. Further, he sought to have the reference which he annexed deemed as filed and served upon payment of the requisite fees.
2. The application was made on grounds that on 17/6/2019, the taxing master delivered his ruling whereby he taxed the bill of costs at Kshs. 123,600/=. The Applicant was aggrieved by the decision of the taxing master and contends that the amounts allowed were not supported by the Advocates Remuneration Order. He was dissatisfied with the costs awarded to the Respondent based on the fact that he is the rightful owner of the suit land and to his mind the costs awarded were excessive and unjustified. He further contended that the delay in filing of the reference was not inordinate and that in any case, the delay had been genuinely explained. He claimed that he was not granted an opportunity to be heard since his objection to the bill of costs was declined and that it would be in the interest of justice for the application to be allowed.
3. The 2nd Respondent opposed the application through the replying affidavit in which he deponed that the application is incurably defective, was an afterthought, bad in law and a waste of the court's time.



He took the position that the Applicant was a vexatious litigant and that he should be made to provide security for costs of Kshs. 200,000/= before he was heard on the application. He urged that the issues raised in the application were res judicata as they were decided in ELC JR Miscellaneous Application No. 17 of 2014, ELC JR No. 18 of 2014 and CMCC No. 62 of 2009. He exhibited a certificate of costs for ELC Misc. No. 17 of 2014(JR) and an application dated 19/4/2012 in respect of ELC Case No. 62 of 2009 in support of that contention. He was also of the view that the application was time barred and should be dismissed. He urged that litigation must come to an end.

4. The 3rd Respondent filed grounds of objection to the application and set out ground that there had been inordinate delay in filing an objection and taxation reference and it was trite law that equity follows the law and equity aids the vigilant not the indolent. The other ground was that the application undermines Article 160 of *the Constitution* of Kenya 2010 on judicial independence. Further, that the application for stay of execution of the ruling lacked merit, was frivolous and an abuse of the court process and that it should be dismissed with costs.
5. Parties filed and exchanged written submissions. The record shows that only the 1st and 2nd Respondents filed their submissions. The 3rd Respondent chose to rely on their grounds of objection. The Applicant did not file submissions.
6. The 1st and 2nd Respondents reiterated their contentions in the replying affidavit and submitted that the only pending issue was their taxed bills of costs from previous matters being Kshs. 123,600/= from Misc. No. 19/2017 and Kshs. 70,685/= from ELC Misc. No. 17/2014 (JR) which remain unpaid.
7. The issue for determination is whether the court should grant leave to the Applicant to file an objection and taxation reference and whether that leave should operate as stay of execution as the Applicant seeks.
8. Regarding the issue of res judicata, the Respondent relied on several documents, including a certificate of costs issued in Misc. No. 17 of 2014 (JR) against the Applicant amounting to Kshs. 70,685/=. He also produced a copy of the application made in ELC No. 18 of 2014 (JR), in which the Applicant sought orders of certiorari to quash the decree of the trial court on the basis that the court had acted beyond its jurisdiction in entertaining an ELC matter. Additionally, the Respondent attached a copy of an application made in CMCC No. 62 of 2009, where he sought eviction orders against the Applicant relating to the land known as Gaturi/Githimu/8297. The documents presented by the Respondents do not support the claim that the present application is res judicata, and a cursory glance shows that the issues in those suits are distinct and unrelated to the subject matter of this application.
9. The ruling on the taxation was delivered on 17/6/2019 while this application was filed on 13/3/2024. Paragraph 11(1) of the Advocates Remuneration Order requires an Applicant to give notice in writing to the taxing officer on the items of taxation which he objects to within fourteen (14) days and the taxing officer under paragraph 11(2) is required to record and forward to the objector the reasons for his decisions on those items. The objector may within 14 days of receipt of the reasons, apply to the judge through a chamber summons setting out the grounds for the objection. Courts have held that 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 further reasons. See *Ahmed Nasir Abdikadir & Co Advocates v National Bank of Kenya Limited* [2006] eKLR, which is the case in this matter.
10. Paragraph 11(4) of the Advocates Remuneration Order gives the court power to enlarge the time stipulated under paragraph 11(1) and (2).
11. The time between the date when the ruling was delivered on 17/6/2019 and 13/3/2024 when the present application was filed is approximately four years and nine months. While that delay may seem inordinate, it is evident that the Applicant was acting in person and filed an appeal instead of a reference



against the bill of costs, which explains the delay in bringing this application. Judgment in the appeal was delivered on 20/11/2023 and the instant application was brought on 13/3/2024. A delay of 3 months and about 7 days is not unreasonably inordinate.

12. The court allows prayers (1) and (3) of the application dated 7/3/2024. The court declines to grant orders for stay of execution as there is no evidence of the threat of execution particularly given that the taxation ruling was rendered close to five years ago.

The court makes no orders as to costs.

DELIVERED VIRTUALLY AT EMBU THIS 13TH DAY OF MAY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Michael Gichovi Njagi- the Applicant acting in person

Ms. L. Chege holding brief for Mr. J. Kiongo for the 3rd Respondent

Diana Kemboi- Court Assistant

No appearance for the 1st and 2nd Respondents

