



**Ranyanya & another v Ochieng (Miscellaneous Reference Application  
E003 of 2022) [2023] KEHC 20535 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20535 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS REFERENCE APPLICATION E003 OF 2022**

**DK KEMEL, J**

**JULY 21, 2023**

**BETWEEN**

**RAYMOND OTIENO RANYANYA ..... 1<sup>ST</sup> APPLICANT**

**WILLIAM NDINYA OMOLLO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**BELINDER ATIENO OCHIENG ..... RESPONDENT**

**RULING**

1. The Applicants filed a chamber summons application dated January 11, 2022 pursuant to section 89 of the *Civil Procedure Act*, Schedule 7 of the *Advocates Remuneration Order* (2014) and section 11 of the *Advocates Remuneration Order*, seeking orders that: the decision of the learned Deputy Registrar dated November 7, 2018 with respect to Item 3,4,10,35,36 and 37 (Services), Item 12, 13,14,15,16,18,19,20,23,30,31,38,39,48,53 and 54 (Court Attendance fees), Item 21,32,33,42,43,44,51 and 52 (filing) party and party Bill of Costs dated August 31, 2021 be set aside and taxed afresh by this Honourable Court and that the costs of this application be provided for.
2. The application is based on the grounds on the body of the Chamber Summons and the supporting affidavit sworn by Ms Everline Ogato, Advocate on even date. In brief, the applicants' case is that the Taxing Master of this Court rendered a ruling on the bill of costs dated August 31, 2021 on November 19, 2021; that the decision of the Taxing Master with respect to Item 3,4,10,35,36 and 37 (Services), Item 12, 13,14,15,16,18,19,20,23,30,31,38,39,48,53 and 54 (Court Attendance fees), Item 21,32,33,42,43,44,51 and 52 (filing) as the award was excessive and that the same was made without giving any justification.
3. In response to the application, the Respondent through its Advocate, Anwar Ahmed, filed a replying affidavit sworn on January 24, 2022. According to the Respondent, the application is an abuse of the



Court process, bad in law, incompetent, frivolous and it ought to be dismissed. He averred that the same is full of misinformation and half-truths.

4. In response to the Respondent's replying affidavit, the Applicants filed a further affidavit sworn by Ms Everline Ogato, Advocate, on February 22, 2023. In brief, she argued that numerous letters dated 25<sup>th</sup> March, 19<sup>th</sup> April, 13<sup>th</sup> May, 22<sup>nd</sup> June, 15<sup>th</sup> July and October 3, 2022 respectively were written to the Court requesting to be furnished with a copy of the Ruling delivered on November 19, 2021 in Bungoma CMCC No 110 of 2018 and that the same is yet to be effected. She further averred that it is beyond her control that the lower Court failed to furnish the Applicants with a copy of the requisite Ruling and that it will be a great injustice to condemn the Applicant and dismiss the Reference for failure to attach the lower court Ruling on assessment. She urged this Court to intervene and order for the requisite ruling to be furnished as it writes its ruling on this reference application.
5. The application was canvassed by way of written submissions. Both parties duly filed and exchanged submissions.
6. The Applicants argued that this Court has the jurisdiction to entertain this application pursuant to Paragraph 11 of the Advocates Remuneration Order. Counsel submitted that the failure to annex the lower Court ruling and reasons on assessment was beyond their control since despite numerous request, the same was never availed. Counsel relied on the case of Siaya High Court Miscellaneous No E34 of 2022 Duke Ongaki Nyaanga & Guardian Bus Company Limited vs Seldon Obel Kubondo.
7. Counsel further argued that this application is properly on record as the failure to attach the ruling of the assessment of costs in Bungoma CMCC 110 of 2018 was beyond the control of the Applicants.
8. Subject to the above and the proposed figures to the specified contentious items, Counsel urged this Court to have the Respondent's lower Court bill assessed down to Kshs 70, 575/=
9. In opposition, the Respondent submitted that the Applicant's application was brought before this Court with delay and that the same has not been genuinely explained and that the Taxing Master's award was not excessive as the award they got was way below what was in the filed bill of costs. He urged this Court to dismiss the application with costs.
10. Upon perusing the application and the response to the same as well as the submissions, i find the only issue for determination is whether the Court has jurisdiction to determine the reference.
11. The Court of Appeal in *Owners of Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd* [1989] KLR 1 where the Court of Appeal (per Nyarangi JA ..... held as follows: -

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

12. What is before the Court is a reference of the decision delivered on November 19, 2021. A reading of the application shows that it is a ruling on the taxation of the bill of costs dated August 13, 2021. The Taxing Officer was exercising his jurisdiction. Rule 10 of the *advocates remuneration order* provides;

The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified



officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.

13. In *Donholm Rabisi Stores (firm) V EA Portland Cement Ltd* [2005] eKLR Waweru J held:

“Taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the taxing officer by the *Advocates Remuneration Order*. The court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the *Advocates Remuneration Order*.”

14. Rule 11 of the *Advocates Remuneration Order* provides;

11. Objection to decision on taxation and appeal to Court of Appeal

- (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.
  - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
  - (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 than 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.
15. The taxation ruling was delivered on November 19, 2021 The Applicants wrote to the taxing officer on January 11, 2022 notifying him of the items that they wished to object to. There are no reasons that have been presented by the taxing officer as per the provisions of Rule 11(2) of the *Advocates (Remuneration) Order*. However, it is a judicial principle that a ruling contains reasons for the decision given. I associate myself with the reasoning of the court in *Bernard Gichobi Njira v Kanini Njira Kathendu & another* [2015] eKLR where the Court was of the opinion that the paragraph only grants an aggrieved party in a case chance to ventilate his grievance(s) only on the itemized bill. I do not find the failure of the magistrate to give these reasons fatal to the reference as the same would be more or less a duplication of the ruling.
16. In *Ahmed Nassir Vs National Bank of Kenya Ltd* [2006] EA the court held: -

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.”

17. In this particular application, it is noteworthy that the Applicants did not avail the Taxing Master’s ruling or reasons as per the dictates of Rule 11 of the Advocates Remuneration Order. My perusal of the Court record did not show the letters dated February 22, 2023. The applicants claimed that numerous letters dated 25<sup>th</sup> March, 19<sup>th</sup> April, 13<sup>th</sup> May, 22<sup>nd</sup> June, 15<sup>th</sup> July and October 3, 2022 which were respectively addressed to the respective Civil Registry at Bungoma Law Courts had been dispatched with no response at all. However, none of those letters or their copies were availed for perusal by this court. The Applicants ought to have availed the alleged letters for confirmation that indeed the respective Registry was in receipt of them but no action to avail the requested ruling was taken.
18. The failure by the Applicants to annex the contentious ruling and/or reasons of the Taxing Master to this reference application is not procedural but a jurisdictional point. It was necessary for this court to be supplied with a copy of the ruling so as to scrutinize the items alleged to have been exaggerated by the taxing master. The applicants have approached this court to interfere with the said ruling but have failed to avail it. Not even a certified copy of a handwritten copy of the ruling has been presented. In the absence of any correspondences by the applicants to the relevant court registry, I find that the applicants have not given a plausible explanation as to why they have not annexed a copy of the ruling appealed against. The ruling in this context is equivalent to a decree in a normal civil appeal which is a critical component. This reference application therefore divests a Court of the jurisdiction to consider controversies in respect to the taxed items as embodied.
19. From the foregoing, it is clear that a reference application can be rendered fatally defective in the absence of the Taxing Masters rulings and/or reasons. The Applicants herein have not attached a copy of the ruling. It follows therefore that their reference application is incompetent and should be and is hereby struck out with costs to the Respondent.

It is so ordered.

**DATED AND DELIVERED AT BUNGOMA THIS 21ST DAY OF JULY 2023.**

**D. KEMEI**

**JUDGE**

**IN THE PRESENCE OF:**

**Miss Ogato for Applicants**

**Sabwani for Anwar for Respondent**

**Kizito Court Assistant**

