



REPUBLIC OF KENYA



Cheruiyot v Ngeno & 5 others (Environment and Land Miscellaneous Case E001 of 2025) [2025] KEELC 4743 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4743 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND MISCELLANEOUS CASE E001 OF 2025
MN MWANYALE, J
JUNE 26, 2025**

BETWEEN

HON. ZAKAYO CHERUIYOT APPLICANT

AND

DAVID KIPKIRUI NGENO 1ST RESPONDENT

JONATHAN KIPNGENO MARITIM 2ND RESPONDENT

JOHN KIPKURUI KOSKEI 3RD RESPONDENT

JOHN KIPKEMOI SIGEI 4TH RESPONDENT

DAVID KIPROTICH KIRUI 5TH RESPONDENT

PAUL KIPKIRUI SIGEI 6TH RESPONDENT

RULING

1. This Ruling is in respect of a reference of the Ruling dated and delivered on 6th February 2025 in respect of the certificate of taxation over the Party and Party Bill of costs dated 28.11.2024.
2. The reference seeks the following substantive orders
 - i. That in the alternative the Honourable court be pleased to order that the Respondents Bill of Costs dated 28.11.2024 with respect to items 1, 2, 7, 10, 13, 25 and 31 be taxed afresh by another taxing officer.
 - ii. That in the alternative the Honourable court be pleased to order that the Respondents Bill of Costs dated 28.11.2024 be taxed afresh by another taxing officer.
 - iii. The other prayers in the reference are spent and/or overtaken by overtaken by events.
3. The grounds in support of the reference are interalia that; -



- i. The taxed amounts in Kilgoris ELC No. 006 of 2023 between Hon. Zakayo Cheruiyot v Koileken Ole Samurai and 15 Others were excessively high to be indicative of error in principles.
- ii. That the Learned Deputy Registrar failed to consider the Applicants submission, as the Bill of Costs was not accompanied with any documents as required under order 21 Rule 9A of the Civil Procedure Rules.
- iii. The Bill is too high and does not commensurate to the work done; hence the chances of the Reference are high and interests of justice dictate that the application be allowed.
- iv. The court directed disposal of the reference by way of written submissions.

Applicants Submissions

4. The Applicants submits that the impugned ruling was delivered on 6th February 2025, and they gave notice to the taxing officer to give reasons for the taxation on a number of items; in accordance with Rule 11[2] of the Advocates Remuneration Order. No reasons were given hence the ruling itself contained the decisions and reliance was placed on the decision in the case of Bernard Gichobi Njira v Kanini Njira Kathendu and Another.
5. On instruction fees, the Applicant submits that the taxing master used the wrong principles as there was no valuation report to support the valuation reached by the taxing master. To buttress the point the taxing master submits that the valuation was not ascertainable from the pleadings. In support of this the Applicant relies on the decision in the case of Peter Muthoka and Another v Ochieng and 3 Others.
6. On getting up fees for trial, the Applicant submits that getting up fees for trial had not been crystallised and could not be awarded as the suit had not been confirmed for hearing. Reliance was placed on decision in the case of C.N Kihara and Advocates v Maendeleo ya Wanawake Organisation Mywo [2021] eKLR.
7. On items 7, 10, 13, 25 and 31 which consist of several services, the Applicant submits that service was effected by way of email and that the award of 10,000/= was not only erroneous but also unrealistic and excessive as it contravened paragraph 9[d] which provides that “where service is by post or by any other mode of substituted service, charge the actual expense incurred...” The Applicant submit for Kshs. 1,400 as service by way of an email as was held in Aoro v Were Reference Application E019 of 2022 [Judgment] KEHC 1468. The Applicant submitted that the application be allowed.

Respondents Submissions

8. The Respondent submits that the Applicant did not comply with provisions of Rule 11 of the Advocates Remuneration Order, in that the Reference herein was filed out of time, it ought to have been filed after reasons were granted, by the Taxation master. Reliance was placed on the decision in the case of Moses Mwiligi and Others v IEBC [2016] eKLR; Martin Mburu and Chepkemboi Advocates v Occidental Insurance Company.
9. The Respondent thus submits that the Reference herein, ought to be dismissed with costs to the Respondents.
10. On the merits of the decision the Respondents submit that the Taxing Master reached a just determination as he is entitled to exercise discretion, in taxation which discretion was not used arbitrarily so as to reach an excessive award.



11. The Reference essentially challenges the instructions fees and getting up fees.
 - i. It is uncontested that the suit against the Applicants in the Bill of Costs, to wit, was discontinued vide an Amendment where in the original 2nd to 15th Defendants names were struck out vide an Amendment to the original Plaint.
 - ii. It is also uncontested that the suit herein has not et taken off; has not been set for hearing, it is still at the pre-trial stage.
 - iii. It is also uncontested that the Ruling for the Bill of Costs was delivered on 06.02.2025 and the reference filed on 21.02.2025.

Issues for Determination

12. Having analysed the Reference the certificate of costs, the Bill of Costs as well as the impugned Ruling thereof, the submissions of the parties, the court frames the following as issues for determination.
 - i. Whether there is a proper and competent reference before court.
 - ii. Whether or not the Bill of costs was taxed under the correct principles.
 - iii. Whether the reference is merited.
 - iv. Who bears the costs of the Appeal.

Analysis and Determination

13. On issue number 1, in order to determine whether there is a competent reference, the court shall look at what Rule 11 of the Advocates Remuneration order provides. Subrule 1, 2 and 4 of Rule 11 are relevant, noting that subrule 3 deals with an appeal from the decision of the Judge to the Court of Appeal.
14. Rule 11 provides
 - “i. Should any part object to the decision of the taxing master, he may within fourteen days after the decision give notice in writing to the taxing officer of the items to which he objects.
 - ii. The taxing officer shall fortieth record and forward to the objector the reason for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to Judge by chamber summons which shall be served on all the parties concerned, setting out the grounds of his objection.
 - iii.
 - iv. The High Court shall have power in its discretion to enlarge 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 parties not less than three clear day’s notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have expired...”
15. The impugned ruling herein was delivered on 6th of February 2025. That ruling contained the reasons for the taxation and the Applicant did not need to ask for the reasons under subrule 1 but ought to have filed the reference within 14 days in accordance with subrule 2.



16. In arriving at the said finding, I am guided by the decisions Ahmed Nassir v National Bank of Kenya 2006 E.A, where the court held as follows “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 reason simply because of the unfortunate wording of subrule 2 of Rule 11 of 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 formal and considered ruling”
17. Similarly, in Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited 2012 eKLR, as well as Court of Appeal in Kipkorir, Titoo and Kiara Advocates v Deposit Protection Fund Board [2005] IKLR 528.
18. It follows from the above decisions cited by the Applicant, that when a ruling gives the reasons for taxation as in the case herein, where the reasons are to be found at paragraphs 7 to 14 of the Ruling, it follows therefrom that the Applicant ought to have filed his reference within 14 days of the said ruling which contained the reasons.
19. The Ruling was delivered on 6th February 2025 and the last date to file a reference was 20th February 2025 which was the fourteen day.
20. The reference application herein was filed on 21st February 2025, one day late, no leave for extension of time was sought by the Applicant under subrule [4] of Rule 11 as required.
21. It follows therefrom that there is no competent reference before court, the same having been filed out of time without leave.
22. The Applicants Advocate were well aware of these provisions and the case law as they cited the same in their submissions.
23. In Imarika Sacco v Katana Miscellaneous Reference E015/2024 [2025] Ruling KEELRC 1135 [KLR] K. Ocharo J. faced with a similar situation, where a reference was filed out of time held that the court had o jurisdiction to entertain a reference filed out of time and dismissed the same. A similar finding was made by the High Court in the decision in the case of Ms. Lubuleliah and Associates Advocates v N.K Brothers Limited Miscellaneous Civil case 52/2012 [2014 [KEHC 7393] where the court held at paragraphs 41 and 42, as follows
 - “ 41. Bearing all the facts the court finds itself more persuaded by the Respondents submissions that the present application was filed out of time and without orders of the court to enlarge time to allow its filing,
 42. On this ground the court finds that the Applicant would not succeed on the reference...”
24. Having espoused the position of the law as stated in the above decision, the inevitable conclusion is that the Refence having been filed out of time, is hereby struck out and the court shall not dwell on the other issues which are issues of its merits.
25. Accordingly, the reference is struck out with costs to the Respondent, and the Stay orders are vacated.

DATED AT KILGORIS THIS 26TH DAY OF JUNE, 2025.

HON. M.N MWANYALE



JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Ms. Rotich for the Applicant

Ms. Mireri for the Respondent

