



Bachu v Chief Land Registrar Kajiado; Nyamweya & 2 others (Interested Parties) (Environment and Land Judicial Review Miscellaneous Application 44 of 2018) [2025] KEELC 6548 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6548 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENT AND LAND JUDICIAL REVIEW

MISCELLANEOUS APPLICATION 44 OF 2018

MD MWANGI, J

SEPTEMBER 30, 2025

IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR

JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF AN APPLICATION BY FIROZE AMIMO BACHU

FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF A DECISION BY THE CHIEF LAND

REGISTRAR KAJIADO DATED 23RD MAY 2018 IN RESPECT

OF BOUNDARY DISPUTE KAJIADO/KITENGELA/6579 (31372)

-VERSUS-

KAJIADO/KITENGELA 6578, KAJIADO/KITENGELA 6582, KAJIADO/KITENGELA/29748

AND KAJIADO/KITENGELA 29753, KAJIADO/KITENGELA 29764, KAJIADO/

KITENGELA 29752, KAJIADO/KITENGELA 29761, KAJIADO/KITENGELA 29760

AND

IN THE MATTER OF LAND TITLE DEED NO. KAJIADO/KITENGELA 22955 AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND

IN THE MATTER OF THE FAIR ADMINISTRATION ACT, 2012

AND

IN THE MATTER OF THE FAIR ADMINISTRATION ACT, 2015



IN THE MATTER OF ARTICLES 10, 40, 47, 60 OF CONSTITUTION OF KENYA, 2010

BETWEEN

FIROZE AMIMO BACHU APPLICANT

AND

CHIEF LAND REGISTRAR KAJIADO RESPONDENT

AND

PENUEL NYANGWESO NYAMWEYA INTERESTED PARTY

PHILIP KIPKORIR MONGONY INTERESTED PARTY

COLLINS OYUNGE OBIERO INTERESTED PARTY

*(In respect of the Notice of Motion application dated 16th
April 2024 seeking a stay of execution of a taxation ruling)*

RULING

Introduction

1. Before this Court for determination is a Notice of Motion Application dated 16th April 2025, in which the Applicant seeks, inter alia; that pending the hearing and determination of the Application, this Honourable Court be pleased to stay the execution of the ruling and subsequent certificate of costs in this matter, including any warrant of arrest or committal to civil jail issued pursuant thereto. The Applicant further seeks that the ruling delivered on 24th April 2024 be set aside or vacated, together with all consequential orders.
2. The grounds upon which the Application is premised are set out on the face thereof and further amplified in the Supporting Affidavit of the Applicant. Broadly, the Applicant contends that the Notice to Show Cause dated 20th February 2025, the ruling of 24th April 2024, and the processes leading thereto are irregular, unlawful, and unconstitutional on account of defective service, reliance on a ruling that had previously been set aside, and denial of the Applicant's right to be heard as guaranteed under Articles 47, 48, and 50 of *the Constitution*.
3. In opposition, the 2nd Interested Party, Phillip Kipkorir Mongony, swore a Replying Affidavit dated 3rd July 2025. He avers that the application is frivolous, an abuse of court process, and designed to delay him from enjoying the fruits of a judgment lawfully obtained. He deposes that the ruling of 17th May 2022 arose from an inter partes hearing of the Applicant's Notice of Motion dated 6th May 2021, which was dismissed with costs to the Interested Parties. Consequent thereto, a party-and-party Bill of Costs was filed on 8th June 2022 to recover the costs so awarded. The Applicant's subsequent application dated 30th June 2022 seeking to set aside the said ruling and stay the taxation was dismissed on 20th February 2023, and thus, according to the 2nd Interested Party, the judgment of 17th May 2022 remain in force.
4. It is the 2nd Interested Party's further deposition that fresh notices of taxation were properly served upon the Applicant's advocates. They were duly stamped and acknowledged, but despite such service, counsel failed to attend court to oppose the Bill of Costs or prosecute the preliminary objection filed.



The Bill of Costs was therefore taxed in their absence, resulting in a valid Certificate of Taxation issued thereafter. He dismisses the Applicant's claim of defective service, insisting that documents were served upon the correct address.

5. The 2nd Interested Party further avers that the application dated 25th September 2024 referred to by the Applicant was never formally filed or served, and is thus inconsequential. He maintains that the only lawful recourse against a taxing officer's decision is by way of a reference, which the Applicant has failed to pursue. He asserts his entitlement as a decree-holder to pursue execution, including committal of the Applicant to civil jail, particularly, as no alternative proposal for settlement of costs has been offered. He urges the Court to dismiss the application as an afterthought intended to frustrate the ends of justice.
6. Similarly, the 3rd Interested Party, Collins Oyunge Obiero, swore a Replying Affidavit echoing the position of the 2nd Interested Party. He reiterates that the judgment delivered on 17th May 2022 concluded the suit and was never set aside. The Applicant's application of 30th June 2022 seeking review or setting aside was dismissed on 20th February 2023 with costs. He deposes that fresh taxation notices were served physically upon the Applicant's advocates, and they were duly stamped and signed. In spite of service, the Applicant's counsel failed to appear to oppose the Bill of Costs or prosecute the Preliminary Objection. He maintains that the taxation proceedings proceeded lawfully and that the Applicant's claim of defective service is unsubstantiated.
7. The 3rd Interested Party reiterates that the application dated 25th September 2024 referred to by the Applicant was never filed or served and is therefore inconsequential. He insists that the only proper recourse available to the Applicant was to file a reference against the decision of the taxing officer, which the Applicant has not done. He asserts his entitlement as a decree-holder to pursue execution, including committal to civil jail, noting that the Applicant has offered no proposal to settle the taxed costs. He characterizes the present application as an afterthought, vexatious, and intended solely to delay the realization of lawful costs.

Directions

8. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the parties' submissions and the same have been considered in the writing of this ruling.

Analysis and determination

9. Having carefully considered the Application, the Supporting Affidavit, the Replying Affidavits of the 2nd and 3rd Interested Parties, and the rival positions advanced by the parties; this court finds that the sole issue arising for determination is whether the applicant should be granted the orders as sought.
10. The law governing challenges to decisions of taxing officers is well set out under Paragraph 11 of the Advocates (Remuneration) Order, which provides as follows:

“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. 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.”



11. The position was affirmed in the case of *Machira & Co. Advocates v Magugu* [2000] 2 EA 428, where Ringera J (as he then was) stated as follows:

“As I understand the practice relating to taxation of bills of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a Reference to a Judge in accordance with paragraph 11 of the Advocates Remuneration Order.”
12. This position has consistently been upheld in subsequent decisions. For instance, in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, the Court of Appeal held that:

“If a taxing officer has erred in principle in his assessment of costs, the aggrieved party has a right to refer the matter to a judge by way of reference under paragraph 11 of the Advocates (Remuneration) Order. The jurisdiction of a judge to interfere with a taxing officer’s decision is therefore dependent on a properly instituted reference.”
13. Similarly, in *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Limited (2)* [2006] 1 EA 5, the Court of Appeal again emphasized that:

“Any complaint about a taxation decision must be raised through a reference under Paragraph 11. A party cannot by any other procedure invite the court to interfere with the discretion of the taxing officer. To do so is to ignore a clear procedure laid down by law.”
14. The proper procedure, therefore, where a party is dissatisfied with a decision on taxation, is first to give a written notice to the taxing officer identifying the disputed items. Upon receipt of reasons from the taxing officer, the aggrieved party must then file a reference before a judge within fourteen days. This procedure is mandatory, and any attempt to bypass it amounts to a fatal defect in the proceedings. Where a party approaches the court through an ordinary application, without first invoking the reference procedure under Paragraph 11 of the Advocates (Remuneration) Order, the court is divested of jurisdiction to entertain the same. Taxation of a bill of costs is a ‘special jurisdiction’, and any challenge thereto must strictly conform to the procedure provided by law under the Advocates Remuneration Order.
15. In the present case, the Applicant seeks to set aside the Certificate of Taxation issue pursuant to a taxation of a party and party Bill of costs and to stay execution of the taxed costs through the present application. However, the proper legal avenue available to the Applicant, if indeed aggrieved by the decision of the taxing officer, was to file a reference under Paragraph 11 of the Advocates (Remuneration) Order. The philosophy underpinning this strict approach is anchored on the principle of procedural propriety. A taxing officer is a judicial officer vested with discretion in taxation matters. The law, through Paragraph 11, ensures that any dissatisfaction with such discretion is channeled in an orderly manner, first to the taxing officer for reasons, and only then to a judge under a reference. To ignore this process is to undermine an explicit statutory framework.
16. The Applicant has not demonstrated compliance with the said procedure. There is no evidence of any notice in writing having been issued to the taxing officer indicating the items objected to, nor is there any reference properly placed before this court. Instead, the Applicant has improperly invoked this court’s jurisdiction through the instant Notice of Motion, which is procedurally untenable.



17. To entertain such an application would be to undermine the express provisions of the Advocates (Remuneration) Order and open the door to abuse of the process of court.
18. In view of the foregoing, it is my finding that the present application is defective. Accordingly, the Notice of Motion dated 16th April 2025 is hereby dismissed in its entirety with costs to the Respondents.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Odeng for the Interested Parties

Mr. Muuo h/b for Mr. Ligami for the Applicant

Court Assistant: Mpoye

