



Prof Tom Ojienda & Associates v County Government of Nairobi (Environment and Land Miscellaneous Case E115 of 2023) [2026] KEELC 1133 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1133 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E115 OF 2023
CG MBOGO, J
FEBRUARY 19, 2026**

BETWEEN

PROF TOM OJIENDA & ASSOCIATES ADVOCATE

AND

COUNTY GOVERNMENT OF NAIROBI CLIENT

RULING

1. The advocate/applicant filed the notice of motion dated 28th August, 2025, expressed to be brought under Article 159 (2) of *the Constitution*, Paragraph 11 (3) of the Advocates Remuneration Order and Sections 1A, 1B and 3A of the *Civil Procedure Act* seeking the following orders:
 - a. That this honourable court be pleased to grant leave to the applicant to appeal against the ruling of this honourable court delivered on the 28th of April, 2025.
 - b. The costs of this application be provided for.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of Prof. Tom Ojienda SC, the managing partner of the advocate/applicant firm. The learned senior counsel deposed that the advocate/applicant filed the advocate-client bill of costs dated 30th October, 2023 against the client/respondent and vide a ruling delivered on 3rd February, 2025, the same was taxed at Kshs.1,457,100.36/=.
3. Being dissatisfied with the ruling, the advocate/applicant filed the chamber summons dated 13th February, 2025 seeking the court to set aside the taxation ruling dated 3rd February, 2025 with respect to items 1 and 2 of the said bill of costs. In a ruling delivered on 28th April, 2025 this court dismissed the reference stating that the taxing master exercised her discretion correctly and properly.
4. The advocate/applicant being dissatisfied with the said ruling seeks to appeal against the same. However, the said appeal is not as a matter of right and that pursuant to Paragraph 11(3) of the



Advocates Remuneration Order, this court has the discretion to grant leave to the advocate/applicant to lodge such an appeal.

5. The advocate/applicant urged this court to grant leave to appeal against the said ruling on the grounds that failure to grant such leave and the consequent inability to lodge an appeal would occasion grave prejudice in that the firm will not be commensurately compensated having rendered professional services.
6. The learned senior counsel deposed that the appeal has a high chance of success as at no point in time were the valuation reports produced in the matter challenged or contested, therefore the value of the subject matter could be ascertained. Further, there is no prejudice suffered by the client/respondent if the orders sought herein are granted as prayed and that this application has been brought without unreasonable delay.
7. The client/respondent filed grounds of opposition dated 6th November, 2025 opposing the instant application on the following grounds:-
 1. The application is incompetent and bad in law, having been filed contrary to the provisions of Paragraph 11 of the Advocates (Remuneration) Order.
 2. The ruling dismissing the reference is not appealable as of right, and no sufficient grounds have been shown to justify the grant of leave.
 3. The application is vexatious, frivolous, and an abuse of the court process, intended merely to delay execution of the taxed costs.
 4. The applicant has failed to demonstrate any arguable or triable issue warranting an appeal.
 5. The application is res judicata, the issues raised having been fully canvassed and determined by the court.
 6. The application offends the overriding objective under Sections 1A and 1B of the *Civil Procedure Act*, which require expeditious disposal of matters.
 7. The application is without merit and should be dismissed with costs.
8. The application was canvassed through written submissions. The advocate/applicant filed its written submissions dated 13th October, 2025. By the time of writing this ruling, the client/respondent had not filed its written submissions.
9. I have considered the application, the grounds of opposition and the written submissions filed by the advocate/applicant. The issue for determination is whether leave should be granted to appeal against the ruling of this court.
10. The advocate/applicant seeks leave to file an appeal to the Court of Appeal against this court's ruling that was delivered on the 28th of April, 2025. The ruling emanated from the advocate-client bill of costs dated 30th October, 2023 which was taxed at Kshs.1,457,100.36/ by the taxing master vide the ruling delivered on 3rd February, 2025.



11. The instant application is anchored on paragraph 11(3) of the Advocates (Remuneration) Order which provides that:-

“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.”

12. The advocate/applicant relied on the case of *Majanja Luseno & Co. Advocates v Patani* (Miscellaneous Application 556 of 2016) [2023] KEHC 17580 (KLR) where it was held as follows:-

“It is trite law that an appeal to the court of appeal from the high court on a reference from the taxing master’s decision is not as of right but upon application for leave under Rule 11(3) of the Advocates Remuneration Order. The court’s discretion to allow or deny leave is to be judiciously exercised upon facts stated by the parties so as to further substantive justice. The application too must be filed without undue delay and chances of success of the intended appeal properly demonstrated – *Muriu Mungai & Co Advocates v New Kenya Co-operative Creameries Ltd* (2010) eKLR; *Shah & Parek Advocates v Apollo Insurance Company Ltd* (2005) eKLR”

13. The advocate/applicant also relied on the case of *Onindo Onindo & Associates Advocates v Gatatha Farmers Co Limited & another* [2022] KEELC 2039 (KLR) where the court held that:

“Since the reference is decided on the law contemplates a finality at that point. But it grants chance for a party who is aggrieved from the decision of the judge to seek leave of the court to move to the court of appeal. What the court ought to consider is the possibility of the success of the intended appeal. That possibility must be real in the mind of the court granting the leave, as was stated in the Canadian case of *Ravelston Corporation Limited (Re)*, 2007 Onca 268 (CanLii). In the case, the court stated thus:

“A leave to appeal application is not the time to assess, much less decide, the ultimate merits of a proposed appeal. However, the applicant must be able to convince the court that there are legitimately arguable points raised so as to create a realistic possibility of success on the appeal.”

14. The law does not specifically dictate how long after the ruling intended to be appealed from must be filed within, but it is recognized that such applications must be made without unreasonable delay. The ruling was delivered on 28th April, 2025 while this instant application is dated 28th August, 2025 which is 4 months after. While the instant application may seem to be considered as one which has been notably delayed, I find the same not unreasonably nor inordinately long.

15. The other consideration is whether the appeal has a possibility of success. The advocate/applicant argued that the valuation report was not contested by the client/respondent and thus should have formed the basis of calculating instruction fees.

16. The advocate/applicant argued that there was a definite basis for instruction fees in the assessment of taxation. In my view, this remains a matter that can be further argued at the court of appeal, and I will say no more.

17. From the above, it is my finding that the advocate/ applicant has a right to appeal the decision of this court if aggrieved as it is in the instant case. I therefore find merit in the notice of motion dated 28th August, 2025 and it is allowed in the following terms:



- i. The client/applicant is hereby granted leave to appeal to the Court of Appeal against the whole of the ruling of this court delivered on 28th April, 2025.
- ii. I make no orders as to costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 19TH DAY OF FEBRUARY, 2026.

HON. MBOGO C.G.

JUDGE

19/02/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Ms. Ndinya for the Advocate/Applicant

