



Njeru, Nyaga & Co Advocates v Thome V Residents Welfare Association (Environment & Land Miscellaneous Case E056 of 2021) [2024] KEELC 161 (KLR) (18 January 2024) (Ruling)

Neutral citation: [2024] KEELC 161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E056 OF 2021
EK WABWOTO, J
JANUARY 18, 2024**

BETWEEN

NJERU, NYAGA & CO ADVOCATES ADVOCATE

AND

THOME V RESIDENTS WELFARE ASSOCIATION CLIENT

RULING

1. This ruling is in respect to the Client’s Chamber Summons application dated 7th April 2022. The application was accompanied by a supporting affidavit sworn by Christine Nyambura Kamau wherein the Client sought the following orders:
 - a. That if it found to have been filed late, time for filing reference before this Honourable Court be enlarged and this reference be deemed to have been filed in time.
 - b. That the Ruling delivered by the Honourable Deputy Registrar Ms. I.N. Barasa on 1st December 2021 taxing the Respondent’s Bill of costs dated 8th March 2021 in the sum of Kshs 448,760.5 be set aside and the said Bill be struck off.
 - c. That this Honourable Court do give such other or alternative orders it would deem fit.
 - d. That costs be provided for.
2. The Application was premised on the following grounds:
 - i. That the Respondent filed an advocate-client bill of costs dated 8th March 2021.
 - ii. That at the time of hearing of the taxation, the applicant raised an objection to taxation of the Bill via an application on the grounds that the Advocate had offered to represent the client pro bono.



- iii. That other than determine the objection, the Deputy Registrar decided to hear both the objection and the Taxation. She dismissed the objection and taxed the bill in the sum of Kshs. 448,760.50.
 - iv. The application was filed at the earliest possible time after getting a copy of the ruling showing the Deputy Registrar's reasons.
 - v. The learned Deputy Registrar erred in law by finding that an advocate's offer to represent a client for free falls within the Agreement envisaged by section 45 of the *Advocates Act*.
3. On 25th September 2023, the Court directed the application to be canvassed by way of written submissions wherein both parties filed their written submissions.
 4. In their submissions dated 2nd October 2023, the Client submitted that the ruling delivered on 1st December 2021 was silent on their application dated 5th October 2021 and as such they were denied an opportunity to be heard on merits since it was implied that the Deputy Registrar's mind was made up. It was also submitted that the reasons for the ruling were not within the knowledge of the Client therefore filing the reference out of time was permissible.
 5. The Advocate filed grounds of opposition and submissions dated 11th October 2023 reiterating that the ruling on 1st December 2021 dismissed the Client's objection premised on offering pro bono services. It was also submitted that once issuance of instructions is admitted, the advocate is entitled to tax his bill of costs. Relying on the case of *Magnolia Pvt Limited v Synermed Pharmaceuticals Ltd* (2018) eKLR, it was submitted that counsel for the client lacks competence to swear the affidavit supporting the chamber summons and therefore should be struck out.
 6. Having considered the application and the parties' submissions, it is clear that the issues for determination before this court are as follows:
 - i) Whether time for filing the reference can be enlarged and deemed as filed in time?
 - ii) Whether the Taxing Officer erred in law and principle while taxing the Advocate - Client Bill of Costs herein and thereby reached a wrong assessment?
 7. The procedure by an aggrieved party to challenge a taxation ruling is set out in the *Advocates Remuneration Order* Paragraph 11 and is very specific on what an aggrieved party should do. A party who intends to challenge a ruling on taxation must first write to the taxing officer within 14 days from the date of ruling of taxation, giving a notice of objection specifying the items in the bill of costs in respect of which he is aggrieved of and requesting the taxing master/officer to give reasons for allowing them as shown in the ruling.
 8. Paragraph 11 of the *Advocates Remuneration Order* stipulates-
 - " A11
 - (1) should any party object to the decision of the taxing officer, he may within 14 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 14 days from the receipt of the reasons apply



to the judge in chambers which shall be served on all 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 sub paragraph (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 enlarge the time fixed by subparagraph (1) or subparagraph (2) of the taking of any step.
- 5) Applications for such an order may be made by chamber summons upon giving every other interested party not less than 3 clear days' notice in writing or as the court may direct, and may so made notwithstanding that the time sought to be enlarged may have already expired”.

9. It is therefore clear from the law that in addition to the option of filing a notice of objection, the filing of a reference within 14 days from the date of receiving the reasons for the decision is also an option. Based on the evidence placed before this court, I am satisfied that the Client/Applicant took necessary steps as dictated by law and therefore the reference may be deemed as filed in time.

10. With regards to the issue of setting aside the ruling, this Court has considered the sentiments of Ojwang J(as he was then) in *Republic v Minister for Agriculture & 2 Others ex parte Samuel Muchiri W'njuguna* [2006] eKLR, where he expressed that:

“The court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors...If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment... The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity ...”

11. In this case, not only did the Client file a notice of objection but also the Court did consider and state reasons for the ruling. The Deputy Registrar stated that no proof had been provided to support the basis of pro bono legal services. There are no compelling reasons offered to warrant this court to interfere with her decision. With regards to the issue of costs, Section 27 of the *Civil Procedure Act* outlines award of costs as a purview within the Court’s discretion. Ultimately, it is in the interest of justice for litigation to come to an end and therefore this court is not inclined to award costs of the application herein.

12. In conclusion, this Court finds that the Chamber Summons application dated 7th April 2022 is unmerited and the same is hereby dismissed in its entirety with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF JANUARY 2024.

E. K. WABWOTO



JUDGE

In the presence of: -

Mr. Kirui for the Advocate.

Ms. Muranda h/b for Mr. Bingi for the Client.

Court Assistant; Caroline Nafuna.

