



Everton Coal Enterprises Limited v Wanjiru Theuri & Company Advocates (Miscellaneous Application 41 of 2021) [2024] KEELC 1802 (KLR) (14 March 2024) (Order)

Neutral citation: [2024] KEELC 1802 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION 41 OF 2021
BM EBOSO, J
MARCH 14, 2024**

BETWEEN

EVERTON COAL ENTERPRISES LIMITED CLIENT

AND

WANJIRU THEURI & COMPANY ADVOCATES ADVOCATE

ORDER

1. On 27/7/2023, this court rendered a ruling on an application by Everton Coal Enterprises Limited dated 17/11/2022 through which they sought an order enlarging time for:

- (i) filing a notice of objection to taxation; and
- (ii) filing a reference. The court granted the plea in the following verbatim terms:

“Consequently, I will grant the client seven (7) working days from today, within which to lodge a fresh notice of objection and file a chamber summons constituting the substantive reference. The client will within the same period of seven (7) days pay to the advocate throw-away costs of Kshs 50,000 covering the present application. It is so ordered.”

2. No notice of objection to taxation was subsequently lodged in this suit. Similarly, no reference was lodged in this suit. However, when the file was cause-listed before the Deputy Registrar for directions on 14/8/2023, counsel for the client caused Thika ELC Miscellaneous Application No E012 of 2023 to be irregularly ferried and placed before the Deputy Registrar after which he submitted before the Deputy Registrar thus:

“The Judge issued directions. Our counterparts filed a response. We can file written submissions. We were granted Miscellaneous 12 of 2023. Everything is the same.”



3. The Deputy Registrar in turn issued the above directions:

- “ 1. . I see a new file No ELCL Misc E012 of 2023 was opened. This is in view of the 2 divisions of the Environment & Land Court.
2. The Judge will give directions on the two files i.e which should be the running file.
3. Parties to file and serve written submissions. Each has 30 days to comply.
4. Applicant to communicate the directions and serve mention notice.
5. Mention on 13/11/2023.”

4. When the parties’ respective advocates subsequently appeared before the Presiding Judge on 14/11/2023, neither of them informed the court that the notice of taxation and the reference in respect of which time had been enlarged were filed as a new cause, to wit, Thika ELCL Misc Application No E012 of 2023. All that counsel for the advocate did was to indicate that the client had filed written submissions and that the advocate needed 21 days to file and serve response submissions. Based on the foregoing, the court listed the “reference” for hearing on 29/1/2024.
5. On 29/1/2024, the two advocates informed the court that what was before court was a reference under rule 11, adding that parties to the reference had filed and exchanged written submissions. They invited the court to fix a date for ruling on the reference. Consequently, the court reserved 14/3/2024 as the date for ruling on the “reference.”
6. While preparing to write a ruling on the “reference”, it has emerged that no reference was filed in this cause. The client filed a notice of objection and a reference in a different cause, to wit, Thika ELCL Misc Application No E012 of 2023. It has also emerged that the physical case file relating to Thika ELCL Misc application No E012 of 2023 which, in the e-filing portal, is a cause that is before Kemei J., has been irregularly collapsed into the physical file relating to Thika ELCL Misc Application No 41 of 2021, a cause that is before Eboso J. Without belabouring, this is irregular. The two files exist as distinct causes before different Judges of this court. Thika ELC Miscellaneous Application No E012 of 2023 cannot be casually removed from Kemei J or casually be made to look like it is the same as Thika ELC Miscellaneous Application No 41 of 2021.
7. Suffice it to state that, as things stand, there is no reference in Thika ELC Misc Application No 41 of 2021. Put differently, there is no reference to attract a ruling.
8. Consequently, the order reserving a ruling date in this cause is vacated. In the absence of any pending application in this cause, the file will go back to the Registry without a date for the next activity. Thika ELCL Miscellaneous Application No E012 of 2023, which was irregularly collapsed in the file folder relating to this cause, will be listed before the relevant Judge for disposal directions.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 14TH DAY OF MARCH 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Nganga for the Respondent



Court Assistant: Hinga

