



Chemoyai t/a Chemoyai & Co Advocates v County Government of Uasin Gishu (Environment & Land Miscellaneous Case E029 of 2023) [2025] KEELC 219 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 219 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND MISCELLANEOUS CASE E029 OF 2023**

**EO OBAGA, J
JANUARY 30, 2025**

BETWEEN

**GAD KIPKIRUI CHEMOYAI T/A CHEMOYAI & CO.
ADVOCATES PLAINTIFF**

AND

COUNTY GOVERNMENT OF UASIN GISHU DEFENDANT

RULING

1. This is a ruling in respect of a Chamber Summons dated 20th August, 2024 in which the Applicant seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the decision of the Taxing Officer as evidenced in the ruling delivered on 19th July, 2024 in the bill of costs dated 14th December, 2023 be set aside and taxed afresh by this honourable court.
 - d. That in the alternative, the Honourable court be pleased to order that the Respondent's bill of costs be taxed afresh by another taxing master.
 - e. Costs are provided for.
2. The Applicant contends that the taxing officer taxed the Advocate/client bill of costs dated 12th April, 2024 (sic) without proof of receipts from Process Server; that the bill was not accompanied with documents as outlined under Order 21 Rule 9A of the Civil Procedure Rules 2020; that the award has placed the burden of party and party costs on the Applicant and that the award was excessive as to call for the intervention from this court.



3. Applicant's application was opposed through a replying affidavit sworn on 4th September, 2024. The Respondent contends that this court has no jurisdiction to entertain the reference as the Applicant did not follow the provision of the Advocate Remuneration Order in that there was no request for reason as to why the taxing officer taxed the bill in the manner he did within the 14 days required and further that the Applicant did not file the reference within 14 days as prescribed by the Rules.
4. The Respondent further contends that the Applicant has not demonstrated that the taxing officer committed any errors of principle to warrant interference by this court. The Respondent went on to state that the provisions of Order 21 Rule 9A relied on by the Applicant relates to the lower court while this matter is a matter in the Superior court.
5. The Respondent further contended that it is not mandatory for an Advocate/client Bill for Costs to be accompanied by document and that in any case, the taxing officer is mandated under Order 13A of the *Advocates Remuneration Order* to direct the production of documents where necessary.
6. The Respondent stated further that it is not a pre-condition that an Advocate/client bill of costs has to be preceded by taxation of party and party bill of costs and that all items on service fees were taxed off and there was no need for the Applicant to file a reference over the same.
7. The Respondent stated that the only issue raised by the Applicant in opposition to the bill was that there was no valuation report produced. He argued that the absence of a valuation report would not deny an Advocate his fees and that in any case, the taxing officer noted this but he applied his discretion in arriving at a reasonable figure on instruction fees.
8. I have considered the Applicant's application as well as the opposition to the same by the Respondent. There are two issues for determination. The first is whether the reference was brought as per the requirements of the law. The second is whether the taxing officer committed an error in principle as to call for the court's interference.
9. On the first issue, it is clear that the court's jurisdiction to deal with a reference stems from Rule 11 (1) and (2) of the Advocates Remuneration Order. There is no evidence that the Applicant sought for reasons from the taxing officer as required by the rules. Whereas this omission may be forgiven as the reasons are clearly discernible from the taxing officer's ruling, the reference was not filed within 14 days as per Rule 11 (2) of the Advocates Remuneration Order.
10. The ruling on taxation was made on 19th July, 2024. The reference was filed a month later. There was no application made to court for extension of time to file the reference out of time. This therefore shows that reference was filed without following the rules and is therefore incompetent. This is enough to dispose off this application but I will nevertheless move on to address the second issue of whether the taxing officer committed any error of principle as to warrant the court to interfere with the discretion of the taxing officer.
11. In the case of *Kagurimi Kangethe & Co. Advocates -Vs- O-lerai Nurseries Limited* (2009) eKLR, it was held as follows;

“An example of an error in principle is where the costs allowed are so manifestly excessive as to justify an interference that the taxing officer acted on erroneous principles”.
12. The Applicant contends that the award was excessive. I have looked at the ruling of the taxing officer. The items on service fees and letters to client were taxed off. The Applicant cannot therefore argue based on what was not granted. On instructions fees, I find that the taxing officer applied the correct principles in arriving at the same having duly noted that there was no valuation report.



13. The taxing officer applied the correct legal principles as set out in law. I therefore find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF JANUARY, 2025 AT MAKUENI.

In the absence of parties who were aware of date of delivery of ruling.

Court assistant Steve Musyoki

