



**Chemoyai t/a Chemoyai & Company Advocates v County Government
of Uasin Gishu (Environment and Land Miscellaneous Application
E028 of 2023) [2025] KEELC 188 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 188 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E028 OF 2023
EO OBAGA, J
JANUARY 30, 2025**

BETWEEN

**GAD KIPKIRUI CHEMOYAI T/A CHEMOYAI & COMPANY
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. That the decision of the Taxing Officer as evidenced in the ruling delivered on 19th July, 2024 in the bill of costs dated 8th December, 2023 be set aside and taxed afresh by this honourable court.
 - c. 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.
 - d. Costs are provided for.
2. The Applicant contends that the taxing officer taxed the Advocate/client bill of costs dated 8th December, 2023 for certain items without proof of receipts from Process Servers; that the bill of costs was not accompanied with documents contrary to the provisions of Order 21 Rule 94 of the *Civil Procedure Rules*; that the award had no supporting documents; that the award placed the burden of party and party costs on the Applicant and that the award was excessive as to amount to an error in principle warranting setting aside.



3. The 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 provisions of the Advocates Remuneration Order in that there was no request for reasons 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 the 14 days prescribed by the rules.
4. The Respondent further contends that the Applicant has not demonstrated that the taxing officer committed any error of principle to warrant interference by this court. The Respondent went on to state that the provisions of Order 21 Rule 9A relied upon by the Applicant relates to the lower court while this is a matter in the Superior court.
5. The Respondent further contended that it is not mandatory for an advocate/client bill of costs to be accompanied by documents 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 items on service fees were not in the nature of disbursements to warrant giving of receipts as evidence.
7. I have considered the Applicant's application as well as the opposition to the same by the Respondent. The issues which stand out for determination are firstly, whether this reference was brought as per the requirements of the law. The other issue is whether the taxing officer committed any error in principle as to warrant this court's interference.
8. On the first issue, it is clear that the court's jurisdiction to deal with a reference is set out under Rule 11 (1) and (2) of the *Advocates Remuneration Order*. There is no evidence that the Advocate sought for reasons from the taxing officer. Whereas this omission may be forgiven as the reasons are clearly discernible from the ruling of the taxing officer, the Applicant did not file the reference within 14 days as provided for under Rule 11 (2) of the *Advocates Remuneration Order*.
9. 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. The application was clearly filed without following the rules. This renders the application incompetent and divests the court of jurisdiction to deal with it. This is enough to dispose of this application but I will nevertheless move on to address the issue whether the taxing officer committed any errors of principle to call for interference of this court.
10. The Applicant contends that the taxing officer's award was excessive. I have looked at the ruling of the taxing officer. The taxing officer applied his discretion properly. All the items were drawn to scale. The taxing officer applied his discretion correctly regarding instruction fees when he found that there was no valuation report which would have guided him.
11. There were no disbursements charged which would have required proof by way of receipts. What was sought in the bill of costs were court attendances and service which did not require proof by way of receipts.
12. In the case of *Kagurimi Kangethe & Co. Advocates v Olerai 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”.



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

It is so ordered.

.....

HON. E. O. OBAGA

JUDGE

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

IN THE ABSENCE OF PARTIES WHO WERE NOTIFIED OF DATE OF DELIVERY OF RULING.

Court assistant Steve Musyoki

