



**Endesia v Odhiambo & another (Environment & Land Case
66 of 2013) [2024] KEELC 3433 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3433 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 66 OF 2013**

JM ONYANGO, J

APRIL 30, 2024

BETWEEN

MARGARET MOLLY ENDESIA PLAINTIFF

AND

CLEMENT ODHIAMBO 1ST DEFENDANT

CHERRYLINE KHAKAI ACHOKA 2ND DEFENDANT

RULING

Introduction

1. This court has been called upon to determine a Preliminary Objection (P.O) dated 28th November 2022. The P.O opposes the application dated 22nd November 2022 on the following grounds:
 1. That the Application is fatally and incurably defective for failure comply (*sic*) with Paragraph 11 (1) and (2) of the [Advocates \(Remuneration\) Order](#).
 2. That the Application is filed contrary to Section 51 (1) (2) of the [Advocates Act](#)

Background

2. I will first give a brief summary of the case before tackling the issues at hand.
3. On 24th March 2021, the defendants filed their Bill of Costs for taxation. By a ruling delivered on 21st October 2022 the Taxing Master taxed the Bill of Costs the sum of Ksh.254, 762/-.
4. Being aggrieved by the decision of the Taxing Master, the Plaintiff herein filed an application dated 22nd November 2022 to inter alia stay the execution of the Certificate of Taxation of Cost and ultimately have the Certificate of Costs made on 25th October 2022 set aside.
5. The P.O was filed by the defendants herein in response to the application dated 22nd November 2022.



The court directed that the P.O be canvassed by way of written submissions.

Issues for Determination

6. Having perused the P.O, a single issue emerges for determination:
 - a. Whether the Preliminary Objection dated 28th November 2022 has merit

Analysis and Determination

a. Whether the Preliminary Objection dated 28th November, 2022 has merit

7. A Preliminary Objection was defined in the celebrated case of *Mukisa Biscuits Manufacturing Co. Ltd v West end Distributors Ltd* (1969) E.A. 696, Sir Charles Newbold as follows:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct...

8. In essence a Preliminary Objection seeks to resolve any procedural or jurisdictional issues prior to delving into substantive aspects of the case.
9. Further, in the case of *Oraro v Mbaja* (2005) KLR 141 where, after quoting the statement of Law, JA. in the *Mukisa Biscuits case (supra)* the Court went on to state that:

A 'Preliminary Objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point....

Anything that purports to be a Preliminary Objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.....

10. The instant P.O is primarily founded on two points of law, firstly Paragraph 11 (1) and (2) of the *Advocates (Remuneration) Order* which provides that:

11. Objection to decision on taxation and appeal to the Court of Appeal

- (1) Should any party object to the decision of the taxing officer, he may within fourteen 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 fourteen days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection...

11. The P.O is additionally premised on section 51 (1) (2) of the *Advocates Act* which provides that:

General provisions as to taxation



1. Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
 2. The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.
12. Essentially the, application dated 22nd November 2022 is opposed on the grounds that it contravenes the *Advocates (Remuneration) Order* in so far as it relates to the requisite time frame for objecting to a decision of the Taxing Master.
 13. As provided in the provisions of the *Advocates Act* enumerated hereinabove, an objection to the decision of a Taxing Master should be done within 14 days upon delivery of the ruling.
 14. A simple analysis of the of the application reveals that the same was filed on 22nd November 2022 whereas the ruling was delivered on 21st October 2022. A further perusal of the record indicates that the Plaintiff sent a letter dated 8th November 2021 requesting reasons for the ruling on taxation. The Taxing Master provided the reasons for their ruling on 18th November 2022. This timeline reveals a procedural discrepancy between the filing of the application and the delivery of the ruling.
 15. For all intents and purposes, the objection to the ruling dated 21st October 2022 was lodged outside the 14-day time frame established under Paragraph 11 (1) and (2) of the *Advocates (Remuneration) Order*.
 16. Moreover, no sufficient reason has been provided as to why no objection was lodged the ruling of the Taxing Master within the established time frame.
 17. The upshot of the foregoing is that the Preliminary Objection dated 28th November 2022 is meritorious and the same is allowed with costs.
 18. Consequently, the application dated 22nd November, 2022 is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ELDORET THIS 30TH DAY OF APRIL, 2024

J. M. ONYANGO

JUDGE

In the presence of:-

Miss Oduor for the Applicant

No appearance for the Respondent

Court Assistant: Mr. Brian K.

