



**Murunga & Associates Advocates v Chemutut (Miscellaneous Application  
3 of 2020) [2024] KEELC 3841 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3841 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
MISCELLANEOUS APPLICATION 3 OF 2020**

**FM NJOROGE, J**

**MAY 15, 2024**

**BETWEEN**

**MURUNGA & ASSOCIATES ADVOCATES ..... ADVOCATE**

**AND**

**HON. JUSTICE CHARLES P. CHEMUTUT ..... APPLICANT**

**RULING**

1. Before me is a Chamber Summons dated the 12<sup>th</sup> June 2023 brought under Section 1A, 1B and 27 of the Civil Procedure Act, Order 42 rule 6 of the Civil Procedure Rules and Rule 11(2) of the Advocates Remuneration Order, and all enabling provisions of the Law, where the Applicant seeks for orders that:  
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  - a. That this honourable court be pleased to grant stay of issuance of certificate of costs pending the hearing and determination of this miscellaneous reference application.
  - b. That this honourable court be pleased to review, vary or set aside the ruling delivered on 31<sup>st</sup> May 2023 by the honourable learned taxing master, Hon, D. Wasike in so far as it is related to the amount already paid and taxed afresh on the said item in the advocate client bill of costs dated 2<sup>nd</sup> June 2020.
  - c. That this honourable court do determine the issue of amount already paid to the advocate and that the Deputy Registrar be directed to assess the total fees of the bill of costs dated 31<sup>st</sup> May 2023 as per the directions of this honourable court.
  - d. That the costs of this application be provided for.
2. The said application was supported by the grounds on its face and the supporting Affidavit, sworn by Jackline Chepkwony Advocate, on 12<sup>th</sup> June 2023. The gist of that affidavit is that the advocate/respondent filed a bill of costs on 2<sup>nd</sup> June 2020 which was taxed at Kshs. 606,037.25 in a ruling



delivered on 31<sup>st</sup> May 2023 by the Deputy Registrar; that the Deputy Registrar erroneously captured the amount already paid by the client/applicant as Kshs. 200,000/- rather than Kshs. 343,350/- as per the annexed payment receipts.

3. The application was opposed by the Advocate/Respondent via a notice of preliminary objection dated 13<sup>th</sup> June 2023 to the effect that this court lacks the requisite jurisdiction to entertain the application; that neither a notice of objection was filed nor a request for written reasons done to the taxing master in accordance with paragraph 11 of the *Advocates Remuneration Order*, hence there is no valid reference before this court.
4. The client/applicant opposed the notice of preliminary objection. He filed grounds of opposition dated 14<sup>th</sup> July 2023 stating that the jurisdiction of this court emanates from rule 10 of the *Advocates Remuneration Order* and that the objection is misconceived; and that a taxing master has no obligation to give further reasons other than those written in her ruling.
5. The application and notice of preliminary objection were canvassed by way of written submissions which I have carefully considered. I find that the issues for determination are: -
  - a. Whether the chamber summons is incompetent for being filed contrary to paragraph 11 of the *Advocates' Remuneration Order*.
  - b. Whether the taxing master committed any errors in her ruling delivered on 31st May 2023 and whether the same should be reviewed.

#### **ANALYSIS AND DETERMINATION**

6. From a perusal of the issues herein, it is clear that the taxing master delivered her ruling on the advocate-client bill of costs on 31<sup>st</sup> May 2023. I also note that before instituting this reference, the client/applicant did not file a notice of objection or even seek written reasons from the taxing master.
7. Paragraph 11 of the *Advocates' Remuneration Order* provides for the procedure to be followed where a party wishes to object to the decision of a taxing officer as it is in the present case. That paragraph reads: -
  - “ 11. Objection to decision on taxation and appeal to 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.
    3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (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 to enlarge the time fixed by subparagraph (1) or subparagraph (2), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.



5. ...”

8. The import of paragraph 11(1) and (2) above is that a party aggrieved by a Taxing Officer’s decision may within 14 days after the decision give notice in writing to the Taxing Officer of items of taxation to which he objects. The party upon receipt of Taxing Officer’s reasons for decision may within 14 days from receipt of reasons apply to a Judge by Chamber Summons.
9. Suffice to say that courts have numerously stated that where reasons for taxation on disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reason simply because the wording of sub Rule (2) of Rule 11 of *Advocates Remuneration Order* demands so.
10. Since the present Reference was then filed in the absence of a notice of objection, I uphold the Advocate’s/Respondent’s grounds of objection to the effect that the Reference herein is incompetent in relation to the provisions of Rule 11(1) of the *Advocates Remuneration order*. Having found that the application is incompetent, it logically follows that there would be no basis for determining the second issue.
11. The upshot of the foregoing is that the application dated 12<sup>th</sup> June 2023 is hereby dismissed. There shall be no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 15<sup>TH</sup> DAY OF MAY 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

