



**M’Ibere v Marete & another (Miscellaneous Application  
015 of 2023) [2024] KEELC 14234 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 14234 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
MISCELLANEOUS APPLICATION 015 OF 2023**

**JO MBOYA, J  
JUNE 26, 2024**

**BETWEEN**

**FREDRICK MUTHUMIA M’IBERE ..... APPLICANT**

**AND**

**EVANGELINE KAJUJU MARETE ..... 1<sup>ST</sup> RESPONDENT**

**SIMON MUGAMBI MARETE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is before me is the Chamber Summons application [Reference] dated 15<sup>th</sup> November 2023; brought pursuant to the provisions of Sections 1A, 1B, and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya, Rules 11(2) and 11(4) of the Advocates Remuneration Order and all other enabling provisions of the law and wherein the Applicant has sought the following reliefs;
  - i. That the Applicant/Defendant be granted leave to file this Reference out of time against the decision of the Magistrate issued in the Certificate of Stated Costs of 3<sup>rd</sup> February 2023 in respect of the Bill of Costs filed on 25<sup>th</sup> October 2022.
  - ii. That the said Reference be deemed to have been properly filed and served within time.
  - iii. That Leave having been granted as prayed, this honourable court be pleased to review and/or vary the decision of the Magistrate issued in the certificate of stated costs of 3<sup>rd</sup> February 2023 in respect to the Bill of Costs filed on 25<sup>th</sup> October 2022.
  - iv. That this Honourable court be pleased to re-assess the issue of costs to be awarded to the Defendant/Applicant in respect to the Bill of Costs filed on 25<sup>th</sup> October 2022 and make findings on the same.



- v. That in the alternative and without prejudice to the foregoing, this court be pleased to remit the Bill of Costs to another Taxing Master for review and reconsideration in terms of costs to be awarded to the Applicant/Defendant.
  - vi. That this Honourable court be pleased to make such other and/or further orders it may deem fit to grant.
  - vii. That the costs of this Application be provided for.
2. The instant application is premised on various/diverse grounds which have been enumerated in the body therein. Furthermore, the application is supported by the affidavit of David Pius Mugambi [Learned Counsel of the Appellant] sworn on 15<sup>th</sup> November 2023 and to which the deponent has annexed a total of six [6] documents, including undated copy of the party and party bill of costs underpinning the Certificate of Taxation sought to be impeached.
  3. The Chamber Summons application under reference came up for directions on various occasions whereupon it was ordered that same be canvassed by way of written submissions. To this end, learned counsel for the Applicant filed written submissions dated 22<sup>nd</sup> February 2024 and wherein same [learned counsel] has highlighted two [2] salient issues for consideration by the court. The issues highlighted by learned counsel for the applicant are, namely; whether the lower court [the Chief Magistrates court at Nkubu] had the jurisdiction to hear and determine MCELC 81 of 2018, which suit had been filed by the Respondent with regards to ownership of LR. No Abogetta/U-Kiungone 1727 & 1728; and whether this honourable court, upon being satisfied with the question of want of jurisdiction by the lower court, has the ability to issue the orders prayed for by the Applicant in the reference.
  4. The Respondents herein filed a Replying affidavit sworn on 12<sup>th</sup> February 2024 and Grounds of opposition dated 12<sup>th</sup> February 2024 and wherein the Respondent has contended that the Application beforehand is premature, misconceived and a non-starter. To this end, the Respondent has invited the court to find and hold that the entire application does not lie.
  5. Having reviewed the reference vide chamber summons application [Reference] dated 15<sup>th</sup> Nov 2023; the responses thereto and upon consideration of the written submissions on record, I come to the conclusion that the determination of the reference turns on three [3] key issues, namely; whether the leave granted by the court on 20<sup>th</sup> March 2024 applies retrospectively to validate the reference that was filed prior to the grant of the Leave or otherwise; whether the reference by and of itself is competent and legally tenable; and whether the court is seized of the requisite jurisdiction to grant the reliefs sought or otherwise.
  6. Regarding the first issue, namely; whether the leave granted by the court on 20<sup>th</sup> March 2024 applies retrospectively [retro-actively] to validate the reference that was filed prior to the grant of the leave, it is instructive to recall that the applicant herein duly appreciated and acknowledged that the reference could not have been filed without leave of court considering that the certificate of cost underpinning the intended reference was issued on 3<sup>rd</sup> February 2023.
  7. Premised on the foregoing, the applicant herein filed the subject application and sought various reliefs. Suffice it to underscore that one of the reliefs sought vide the reference was a prayer for leave to file the reference out of time. [See prayer 1 at the foot of the reference dated 15<sup>th</sup> November 2023].
  8. It is instructive to note that the application beforehand or better still the limb of the application under reference seeking for leave came before the court [differently constituted] on 20<sup>th</sup> March 2024, whereupon the court proceeded to and granted the leave.



9. Given the nature of the orders that were granted by the court on 20<sup>th</sup> March 2024, it is imperative that the same be reproduced. The said orders are couched in the following terms;
  - i. That an order be and is hereby issued granting Leave to Applicant to file a reference out of time.
  - ii. The same be filed within seven days from the date hereof.
  - iii. Costs of this Application to the respondents.
10. My understanding of the orders that were granted by the court on 20<sup>th</sup> March 2024; drives me to the conclusion that the Applicant herein was granted liberty to file the intended reference within seven [7] days of the order. Furthermore, the orders under reference were futuristic in nature and thus same did not validate any antecedent [previous] filings. To this end, it is apparent that the orders in question did not validate the chamber summons application [Reference] dated 15<sup>th</sup> Nov 2023.
11. On the other hand, it is also not lost on me that the orders of the court which were issued on 20<sup>th</sup> March 2024 also cannot be deployed retrospectively or retroactively. Simply put, court orders are forward-looking unless expressly stated otherwise.
12. In this regard, I hold the humble opinion that the orders granting leave issued on the 20<sup>th</sup> March 2024 cannot cure the prior filing of the Chamber summons application. To this end, there is no gainsaying that the reference which was canvassed before me was not only premature, but legally untenable.
13. Turning to the second issue, namely, whether the reference beforehand is competent or otherwise, it is imperative to underscore that whosoever seeks to lodge a reference with a view to challenging a certificate of taxation is obligated to file and lodge a Notice of objection to taxation, highlighting [citing] the items of taxation sought to impeached/challenged [See rule 11(1) of the Advocates Remuneration Order].
14. Moreover, it is important to underscore that the notice of objection to taxation which is a peremptory document must be lodged with the taxing officer within 14 days of the issuance of certificate of taxation. Further and at any rate, it suffices to posit that it is the lodgement of the notice of objection to taxation that precipitates the issuance of the reasons for taxation.
15. It is important to highlight that where the notice of objection to taxation is not issued/lodged within the prescribed timelines or such other extended timelines [Subject to leave of the court], then the taxing officer is not obligated to supply reasons for the taxation.
16. On the other hand, there is no gainsaying that the notice of objection to taxation which precipitates the issuance of the reasons for taxation forms the foundation [fulcrum] of the reference. For coherence, it is the notice of objection to taxation that highlights the specific items of taxation that are intended to be challenged in the reference.
17. In the absence of a notice of objection to taxation, what becomes apparent is that a reference or any intended reference is negated and rendered premature. To my mind, the notice of objection to taxation in accordance with rule 11(1) of the Advocates Remuneration Order plays a key role in the process of mounting a reference. Instructively, the Notice of Objection to taxation play[s] the same role as a Notice of Appeal in respect of Appeals before the Court of Appeal.
18. Be that as it may, it is not lost on me that the Applicant herein did not lodge and or file any notice of objection to taxation. Furthermore, there is no evidence that the applicant ever sought and obtained extension of time within which to file the notice of objection to taxation or at all.



19. In my considered view, even if the applicant herein had filed a reference within the seven days of the orders made on the 20<sup>th</sup> March 2024 [which is not the case] such reference would still have been stillborn for want of the requisite notice of objection to taxation.
20. Before concluding on this aspect, it is instructive to take cognizance of the apt and succinct exposition of the law in the case of *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] KECA 245 (KLR) where the Court of Appeal expounded on the legal import and tenor of rule 11 of the Advocates Remuneration Order [ARO].
21. For coherence, the court stated and held thus;
  - “ 12. Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects.” As the trial judge correctly found, the Respondents notice of 1st August 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.
  13. As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeals or reviews was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation; the Respondents notice of 1st August 2001 was fatally defective. It follows that the Respondents reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out.”
22. The ratio decidendi espoused in the decision [supra] is devoid of ambiguity. It is crystal clear. I adopt same and wish only to add that the applicant herein did not abide by the preemptory provisions of the law.
23. Next is the issue of the jurisdiction of the court to grant reliefs sought. It is common ground that jurisdiction is everything. Furthermore, where court is divested of jurisdiction, the court is obliged to down its tools at the earliest. [See *Owners of Motor Vessel Lillian S vs Caltex Oil Kenya Limited* [1989] EKLK; see in the matter of *Interim Independent Electoral Commission* [2011] EKLK; and *Phoenix of East Africa Assurance Company Limited vs S.M Thiga T/A Newspaper Service* [2019] eKLK].
24. While dealing with issue[s] numbers 1 and 2 elsewhere hereinbefore, I have found and held that the reference was filed out of time without leave. Moreover, I have also held that the leave that was granted ex post facto on the 20<sup>th</sup> March 2024 does not operate retrospective. Besides, I have also found that the applicant did not lodge the requisite notice of objection to taxation.
25. Bearing in mind the foregoing mis-steps, there is no gainsaying that the failures highlighted hereinbefore have divested the court of the requisite jurisdiction to entertain and adjudicate upon the subject matter. Absent jurisdiction, a court of law cannot make any further steps. In any event, there is no gainsaying that any orders issued by a court without jurisdiction are a nullity ab initio.
26. In a nutshell, I conclude that the court is bereft of Jurisdiction to engage with and or adjudicate upon the subject reference and or to grant the reliefs thereunder.



### **Final Disposition**

27. Having reviewed the three [3] key issues that were highlighted in the body of the ruling, it must have become apparent that the Chamber Summons Application [Reference] dated 15<sup>th</sup> Nov 2023, is premature and misconceived.
28. In the premises, the final orders that commend themselves to the court are as hereunder;
- i. The Reference be and is hereby struck out.
  - ii. Costs of the Reference be and are hereby awarded to the Respondents.
  - iii. The Costs in terms of clause (ii) above shall be agreed upon and in default, be taxed by the Deputy Registrar of the court in the conventional manner.
29. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF JUNE 2025**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].**

**JUDGE**

In the presence of:

Mutuma – Court Assistant

Mr. Mugambi Mutembei for the Applicant

Mr. Leonard Ondari for the Respondents

