



**Anduru v George Nyoro t/a Nyoro General Engineering Ltd (M/
S Mirugi Kariuki & Co. Advocates) (Environment and Land Miscellaneous
Application E33 of 2023) [2024] KEELC 4507 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4507 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E33 OF 2023
LA OMOLLO, J
JUNE 6, 2024

BETWEEN

EMILY AKOTH ANDURU APPLICANT

AND

**GEORGE NYORO T/A NYORO GENERAL ENGINEERING LTD (M/S MIRUGI
KARIUKI & CO. ADVOCATES) RESPONDENT**

RULING

1. This ruling is in respect of the Applicant’s Chamber Summons Application dated 20th June, 2023. The said application is expressed to be brought under Sections 1A, 3B, 3A of the *Civil Procedure Act*, Rule 11 of the *Advocates Remuneration Order* and Order 21 rule 9A of the *Civil Procedure (Amendment) Rules*, 2020 (Legal Notice 22).
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That the decision of the taxing officer as evidenced in the Respondent’s letter to court dated 18th April, 2023 and the certificate of costs dated 22nd May, 2023 with respect to items 1(i), (ii), (iii), (iv), (v) and (vi) in the bill of costs dated 18th April, 2023 be set aside and taxed afresh by this honorable court.
 - e. That in the alternative, the honorable court be pleased to order that the Respondent’s bill of costs with respect to items 1(i), (ii), (iii), (iv) (v) and (vi) in the bill of costs dated 18th April, 2023 be set aside and taxed afresh by another taxing master.



- f. That the auctioneer's charges (invoice) of Kshs. 53,536/= and any subsequent/purported proclamation notices be declared null and void ab initio.
 - g. That the costs in the application awarded to the applicant. (sic)
3. The application is based on the grounds on its face and the supporting affidavit of Emily Akoth Anduru sworn on 20th June, 2023.

Factual Background.

4. The Applicant's application first came up for hearing on 20th June, 2023 when the court directed that the application be served upon the Respondent within seven days.
5. On 18th July, 2023 the court directed that the application be heard by way of written submissions. It was mentioned severally to confirm filing of submissions and was finally reserved for ruling on 20th December, 2023.

Applicant's Contention.

6. The Applicant contends that the Respondent was awarded costs in the ruling delivered on 2nd March, 2022 after filing a preliminary Objection to the Applicant's application.
7. The Applicant also contends that on 9th June, 2023 she learnt through a friend that Craterview Auctioneers had been instructed by the Respondent to attach and sale her movable property in execution of a decree for money.
8. The Applicant further contends that the Respondent failed to serve the bill of costs on her and her advocates on record. It is her contention that as a result she now seeks leave of the court to file a reference out of time as the certificate of costs was already issued on 22nd May, 2023.
9. It is also her contention that if stay of execution orders are not granted, the Respondent will proceed to execute notwithstanding the unlawful procedure he adopted and it will render the intended reference inconsequential.
10. It is further her contention that her advocates on record advised her that the Respondent did not comply with the provisions of Order 21 Rule 9A of the *Civil Procedure Rules*.
11. The Applicant ends her deposition by stating that she will suffer irreparable harm should the court not order stay of execution pending the hearing and determination of the reference herein.

The Respondent's Response.

12. The Respondent filed Grounds of Opposition dated 10th July, 2023 on 13th July, 2023. They are as follows;
 - a. That the application is fatally and/or incurably defective and grossly incompetent and should not be entertained by this Honourable Court.
 - b. That the application as filed is incompetent, misconceived, without merit and an abuse of the court process and the same should be dismissed in limine.
 - c. That the costs relating to the lower court matter serialized as Nakuru CMCC No. E142 of 2021 Emily Akoth Anduru v George Nyoro T/A Nyoro General Engineering Ltd. were way back assessed at a reasonable sum of Kshs. 61,600/= on or around 22 May, 2023. (sic)



- d. That the Applicant herein if truly aggrieved by the assessed costs ought to have firstly fully complied with the provisions of paragraph 11 of the *Advocates (Remuneration) Order*, 1962 and where he would have raised her objection and listed the items she is disputing and sought for reasons from the taxing officer.
- e. That the Applicant herein never filed any objection within fourteen (14) days to the said taxation as provided under paragraph 11 (1) *Advocates (Remuneration) Order*, 1962. This fact will never change even if the Applicant was to coat with all manner of excuses.
- f. That the Applicant to date has not prepared an objection and neither has she listed the items that she is objecting as required under paragraph 11(1) and (2) of the *Advocates Remuneration Order* for the taxing officer to give her/his reasons on those objected items.
- g. That a reading of this application further confirms that the Applicant herein is not even aware what items she is objecting to and on what basis and it is obvious that the whole purpose of this application is solely to derail the execution which has commenced and at its final stages.
- h. That the Respondent's letter of costs was seeking for a total sum of Kshs. 115,700/= but which costs were taxed off by the taxing officer and the Respondent was only awarded Kshs. 61,600/= and it is quite strange to hear the Applicant herein now claim the same was not reasonable without giving any reasons whatsoever. (sic)
- i. That the provisions of paragraph 11 of the *Advocates (Remuneration) Order*, 1962 makes it mandatorily for one to specify the items one is objecting and so to be able to justify the re-assessment of the costs for that particular item(s) but in the instant application the Applicant is not objecting to any item(s) but wants the taxing officer from the blues be faulted and the bill be re taxed. This clearly goes against the express mandatorily provisions of paragraph 11 of the *Advocates (Remuneration) Order*, 1962. (Sic)
- j. That party and party costs is the bread and butter for advocates and no wonder there are very strict timelines to be adhered to by litigants on matters of costs and any extension of this timelines must be justified and based on solid grounds.
- k. That no plausible reasons whatsoever have been given by the Applicant to warrant extension of time and further with application has been filed too late in the night and after inordinate delay. (sic)
- l. That the applicant in her supporting affidavit at paragraph 4 expressly state that she knew execution had commenced on 9/6/2023 but only filed the instant suit on 20th June, 2023. It has been said time and again that even a delay of one day must be explained. This inordinate delay in filing the instant application has not been explained whatsoever. Such a magnitude of delay running into months is inexcusable and this Honourable Court ought not to exercise its discretion to enlarge time in the circumstances.
- m. That the Applicant herein have not put before this Honourable Court any ground on why she is objecting and/or intend to object the decision of the taxing master and which decision was delivered on the 22 May, 2023. (Sic)
- n. That the grounds outlined in this intended reference does not in any way fault the decision of the taxing master and the same is a frivolous reference devoid of any merit.
- o. That this Honourable Court before exercising its discretion on whether to allow the reference to be filed out of time ought first to consider if the intended reference raises any triable issues



and in this case the intended reference raises no triable issues, its frivolous, an abuse of court process and devoid of any merit.

- p. That the instant application was filed on 20th June, 2023 and this was exactly twenty-nine (29) days later after the said ruling. The Applicant has not explained the said delay and it is already past the mandatory fourteen (14) days. Such a delay is unexplained and the Applicant is clearly guilty of laches and equity ought not to come to her aid.
- q. That the Application herein is a mere after thought by the Applicant and is an attempt to halt execution and to delay the Respondent from enjoying the fruits of the judgment. These are just but crocodile tears being shed by the Applicant and nothing more.
- r. That delay however short must be explained. In the present case, there are long periods of delay which have not been explained and the half-hearted attempts to offer a lame explanation cannot be basis for extending time otherwise the Honourable Court will be setting an undesirable precedent.
- s. That from all the foregoing the delay in filing this application has not been explained, its ordinate and inexcusable. The same ought to be dismissed with costs.
- t. That the application herein is frivolous, vexatious, hopeless and merely intended to propagate a nullity and hence the same is untenable in law.
- u. That the Applicant's application is incompetent, bad in law and devoid of any merits, null and void ab initio.

Issues for Determination.

- 13. The Applicant filed on submissions on 1st August, 2023 and 4th October, 2023 while the Respondent filed his submissions on 22nd February, 2024.
- 14. The Applicant in her submissions filed on 1st August, 2023 identifies the following issues for determination;
 - a. Whether a party can claim costs by only filing a written request without a statement of costs and supporting documents.
 - b. Whether the decision of the taxing officer should be set aside and taxed afresh by this honorable court.
 - c. Whether the reference herein lacks merit for offending paragraph 11(1) and (2) of the [Advocates Remuneration Order](#).
 - d. Who should pay costs.
- 15. The Applicant relies on Order 21 Rule 9A of the [Civil Procedure \(Amendment\) Rules](#), 2020 (Legal Notice 22), [First American Bank v Shah & Others](#) (2002) 1 E.A 64 at 69 as was cited in [Vincent Kibiwott Rono v Abraham Kiprotich Chebet & another](#) [2022] eKLR, Republic v Ministry of Agriculture & 20 Others Ex parte Muchiri W'Njuguna [2006] eKLR, Kipkorir Titoo & Kiara Advocates v Deposit Protection Fund Board NRB CA Civil Appeal No. 220 of 2004 [2005] eKLR among other judicial authorities.
- 16. The Applicant also relies on Paragraph 11 of the Advocates Remuneration Order, Article 159(2)(d) of the [Constitution](#) of Kenya, Section 27(1) of the [Civil Procedure Act](#) and submits that the Respondent made a written request without any supporting documents accompanying the statement of costs.



17. The Applicant also submits that the Respondent did not serve her or her advocates on record with the breakdown of the costs as required by law and relies on the judicial decision of *Vincent Kibiwott Rono v Abraham Kiprotich Chebet & another* [2022]eKLR in support of her submissions.
18. On the second issue, the Applicant relies on Republic v Ministry of Agriculture & 20 others Ex parte Muchiri W’Njuguna [2006] eKLR and submits that the taxing officer based his decision on the written request which defied the requirements set out in law.
19. The Applicant also submits that items 1(i), (ii), (iii), (iv), (v) and (vi) of the bill of costs dated 18th April, 2023 should be set aside and taxed afresh by another taxing master.
20. On the third issue, the Applicant relies on Paragraph 11 of the *Advocates Remuneration Order*, the judicial decision of *James Njoro Kibutiri v Eliud Njau Kibutiri* 1 KAR 60 [1983] KLR 62; [1976-1985] EA 220 as was cited in *Edward R. Ouko v Speaker of the National Assembly & 4 others* [2017] eKLR and reiterates that she was never served with the bill of costs and only came to learn that Craterview Auctioneers had been instructed by the Respondent to attach and sale movable property in execution of a decree for money.
21. The Applicant submits that as soon as she became aware of the said taxation, she filed an application through Chamber Summons as required by Rule 11(4) of the *Advocates Remuneration Order* seeking leave of court to file a reference out of time.
22. The Applicant relies on *Party of Independent Candidate of Kenya v Mutula Kilonzo & 2 Others* [2013] eKLR and Section 27(1) of the *Civil Procedure Act* and seeks that the Respondent bears the costs of the application.
23. The Applicant’s submissions filed on 4th October, 2023 reiterate the submissions earlier filed on 1st August, 2023.
24. The Respondent in his submissions identifies the following issues for determination;
 - a. Whether this honorable court has jurisdiction to entertain this suit.
 - b. Whether this reference was filed within time and before the right court.
 - c. Whether the application is meritorious.
 - d. Whether costs should issue.
25. On the first issue, the Respondent submits that the Applicant commenced Nakuru CMCC No. 142 of 2021 Emily Akoth Anduru (Suing as one of the administrators of Dismus Anduru Achar) v George Nyoro T/A Nyoro General Engineering Limited to execute a decree that was arising from Nakuru High Court Case No. 41 of 1998 George Nyoro t/a Nyoro General Engineering v Dismus Anduru Achar.
26. The Respondent also submits that the trial court in dismissing Nakuru CMCC No 142 of 2021 noted that the Applicant’s suit was dealing with issues of execution which ought to have been raised in Nakuru High Court Case No.41 of 1998.
27. The Respondent further submits that the Applicant herein is making the same mistake since the instant application ought to have been filed in the court where the execution proceedings were being undertaken.
28. It is the Respondent’s submissions that the provisions of Section 34 of the *Civil Procedure Act* are mandatory and they bar any court from entertaining a separate suit on an execution issue.



29. The Respondent relies on the judicial decisions of *Charles Ngare Karaya v Florence Muthoni & another* [2018] eKLR, *Nazir Jinnah v Asmahan Peterson & 2 Others* [2013], Kennedy Ooko Jacob t/a Ssebo Intel. Co. Auctioneer v John Abich Ochanda [2021] eKLR in support of his arguments.
30. On the second issue, the Respondent submits that costs were taxed on 22nd May, 2023. The Respondent also submits that the Applicant did not seek reasons from the taxing officer and neither did she file a reference within fourteen days as required by Rule 11 of the *Advocates Remuneration Order*, 1962.
31. It is the Respondent's submissions that there have been numerous deliberate delays by the Applicant which have not been explained and her application should therefore be dismissed with costs.

Analysis and Determination.

32. After considering the Applicant's application, the response thereto and the rival submissions filed herein, the only issues that arise for determination are;
 - a. Whether the Applicant's application dated 20th June, 2023 has merit
 - b. who should bear the costs of the application.
33. Earlier in this ruling, I set out the prayers sought by the Applicant but I will nonetheless replicate them as hereunder;
 - a. Spent
 - b. Spent
 - c. Spent.
 - d. That the decision of the taxing officer as evidenced in the Respondent's letter to court dated 18/4/2023 and the certificate of costs dated 22/5/2023 with respect to items 1(i), (ii), (iii), (iv), (v) and (vi) in the bill of costs dated 18/4/2023 be set aside and taxed afresh by this honorable court.
 - e. That in the alternative, the honorable court be pleased to order that the Respondent's bill of costs with respect to items 1(i), (ii), (iii), (iv) (v) and (vi) in the bill of costs dated 18/4/2023 be set aside and taxed afresh by another taxing master.
 - f. That the auctioneer's charges (invoice) of Kshs. 53,536/= and any subsequent/purported proclamation notices be declared null and void ab initio.
 - g. That the costs in the application awarded to the applicant. (sic)
34. The basis upon which the Applicant is seeking the said orders is that the Respondent was awarded costs on 2nd March, 2022 in Nakuru CMCC 142 of 2021. She also states that she was later informed that auctioneers had been instructed to attach and sell her movable property in execution of a decree for money.
35. The Applicant argues that that is when she became aware that the Respondent had filed his bill of costs which were taxed and a Certificate of Costs issued on 22nd May, 2023.
36. The Applicant admits that the period within which to file a reference as provided for under Paragraph 11 of the *Advocates Remuneration Order* has lapsed and she therefore seeks for leave to file a reference out of time.



37. Paragraph 11 of the *Advocates Remuneration Order* provides as follows;
- 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 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) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have expired.”
38. In the judicial decision of *Ahmed Nasir Abdikadir & Co. Advocates -v- National Bank of Kenya Ltd* [2006] eKLR the court held as follows;
- “Although rule 11(1) of the *Advocates Remuneration Order* stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of sub rule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not indeed to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling... Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in substance the same is dismissed.”
39. A perusal of the prayers sought by the applicant show that the Applicant is seeking that the taxing officer's decision together with the certificate of costs dated 22nd May, 2023 be set aside or taxed afresh by another taxing officer.
40. The Applicant is also seeking that the auctioneer's charges of Kshs. 53,536/= be declared null and void.
41. It is important to note that there is no prayer in the Applicant's application seeking for leave to file a reference out of time and as admitted by the Applicant, the time allowed to file a reference against the ruling of the taxing officer has already lapsed.
42. Even though the Applicant deposes in her supporting affidavit that she is seeking for an extension of time to file a reference out of time, no such prayer has been sought. It is needless to say that parties are bound by their pleadings.
43. It is my view therefore that given the time for filing a reference has lapsed and given that the Applicant has not sought extension of time to file a reference, the orders sought by the Applicant in her application cannot be granted.



44. On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.

Disposition.

45. Consequently, I find that the application dated 20th June, 2023 lacks merit and it is hereby dismissed with costs to the Respondent.

46. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 6TH DAY OF JUNE, 2024.

L. A. OMOLLO

JUDGE

In the presence of: -

No appearance for the Applicant.

Mr. Mwangi for the Respondent.

Court Assistant; Mr. Joseph Makori.

