



REPUBLIC OF KENYA



Musau v National Land Commission (Environment & Land Miscellaneous Case E024 of 2024) [2025] KEELC 639 (KLR) (18 February 2025) (Ruling)

Neutral citation: [2025] KEELC 639 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND MISCELLANEOUS CASE E024 OF 2024
AY KOROSS, J
FEBRUARY 18, 2025**

BETWEEN

CHRISTOPHER MUSYOKA MUSAU APPLICANT

AND

THE NATIONAL LAND COMMISSION RESPONDENT

RULING

1. This ruling seeks to determine the chamber summons dated 6/06/2024 filed by the applicant. It seeks the following reliefs: -
 - a. The decision of the taxing officer of 24/05/2024 in Machakos ELC Petition No. E009 of 2021 by the applicant against the respondent on the taxation of instruction fees in the applicant's party and party bill of costs dated 24/01/2024 and any consequential orders/certificates thereon be set aside/vacated.
 - b. The bill of costs be taxed afresh.
2. The motion is supported by the grounds set out on the body thereof and reiterated in the supporting affidavit of the applicant deposed on 6/06/2024.
3. In summary of both, he asserted the taxing officer had erred by making a decision that was contrary to the law, finding the value of the subject matter was not expressly disclosed in the pleadings, filed documents or judgment yet the same was reflected in the petition and consent judgment of 2/11/2022 and misapplied and misapprehended Schedule 6 of the Advocates Remuneration Order (2014).
4. Moreover, he stated the taxing officer did not exercise her discretion properly, misapprehended the principles of law, and erred in awarding manifestly low fees. He urged the court to consider the original record of the petition when arriving at its decision and allow the motion.



5. Despite being served, the respondent did not file documents opposing the motion, so it stands unopposed.
6. The motion came before me for hearing on 20/1/2025 and Miss. Musyoki argued it by oral submissions and prayed for the motion to be allowed as prayed.
7. Having carefully considered the motion, its grounds, affidavits, annexures and submissions, the issues that arise for resolution are as follows: -
 - a. Whether the summons is filed prematurely.
 - b. Whether the summons is merited.
 - c. What orders should this court issue including an order as to costs?
8. Thus, I will now proceed to address these issues consecutively.

a. Whether the summons is filed prematurely.

9. Once a bill of costs has been taxed off by a taxing officer and if aggrieved by this decision as the applicant is, he is usually guided by Order 11 of the Advocates (Remuneration) Order. This provision of law provides an elaborate procedure by stating thus: -

- “(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 subsection (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 already expired.”

10. From the face of the motion, the applicant has moved this court under the provisions of Order 11 (1) and (2) of the Advocates (Remuneration) Order.
11. However, having considered the summons that is before this court, there is no evidence whatsoever that the applicant ever issued a notice in writing to the taxing officer of the items of taxation to which he objects as required by Order 11 (1) of the Advocates (Remuneration) Order.
12. My understanding of this provision of law is that the filing of a notice of objection on items of taxation is a mandatory pre-emptive step and the applicant ought to have done so within 14 days from when



the ruling was rendered. Once this hurdle is met, then the applicant moves to the next stage which is obtaining reasons as envisaged by Order 11 (2) of the Advocates (Remuneration) Order.

13. Being guided by the persuasive decisions of Ahmednasir Abdikadir & Co. Advocates vs. National Bank of Kenya Limited (2) [2006] 1 EA 5 and Evans Thiga Gaturu, Advocate V Kenya Commercial Bank Limited [2012] Kehc 4274 (Klr), I am of the humble view if the applicant considered the ruling of the taxing officer contained sufficient reasons, he could file the reference within 14 days from the date thereof.
14. However, if he was of the view the ruling did not contain sufficient reasons or did not contain any reasons whatsoever then he could, in writing ask for further reasons or reasons as the case may be but must file the reference within 14 days upon such receipt.
15. In the circumstances of this case, the applicant skipped these essential steps as no objection was ever raised with the taxing officer. Worse is, what he has presented as a ruling is an unsigned and undated purported ruling.
16. In other words, there are no reasons for the decision of the taxing officer that has been presented before this court. It is usually mandatory for the reasons to be furnished for the court to reassess the decision of the taxing officer and make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.
17. The applicant acted prematurely and pre-empted the lodging of an objection or the giving of the reasons by the taxing officer and in the absence of the notice of objection to the taxed items and reasons for taxation which are grave omissions, I find the reference herein is incompetent, null and void ab initio.
18. Before issuing my final disposal orders, I observed that despite the applicant referring to a petition and consent judgment as the lenses upon which this court should consider the alleged decision of the taxing officer, he never bothered to avail copies to this court.
19. In the end, and having found the summons incompetent, it is unnecessary to address issue (b) while on issue (c), I hereby strike out the chamber summons dated 6/06/2024 with no orders as to costs. This file is hereby effectively marked as closed.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 18TH DAY OF FEBRUARY, 2025.

HON. A.Y. KOROSS

JUDGE

18/2/2025

Ruling delivered virtually through Microsoft Teams video Conferencing platform in the presence of:

Miss Muthoki for applicant

N/A for respondent

Ms Kanja - Court Assistant

