



Githogori and Harrison Associates Advocates v Ngugi (Environment and Land Miscellaneous (Reference) Application E045 of 2024) [2025] KEELC 516 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 516 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS
(REFERENCE) APPLICATION E045 OF 2024
MAO ODENY, J
FEBRUARY 13, 2025

BETWEEN

GITHOGORI AND HARRISON ASSOCIATES ADVOCATES APPLICANT

AND

PIUS MBUGUA NGUGI RESPONDENT

RULING

1. This ruling is in respect of the Respondent's Notice of Preliminary Objection dated 31st October, 2024 on the following grounds:
 - a. The Applicant's Chamber Summons application dated 9th October 2024 is bad in law and fatally defective for failing to comply with Rule 11 (1) and (2) of the [Advocates Remuneration Order](#) and in particular the said application is time barred having been filed outside the statutory time lines provided therein.
 - b. The Applicant's Chamber Summons application dated 9th October 2024 is bad in law and fatally defective for failing to comply with Rule 11 (1) of the [Advocates Remuneration Order](#) and in particular the Applicant failed to give notice of objection to the Taxing Officer of what they are objecting to and further failed to request for the reason thereof.
 - c. The Applicant's Chamber Summons application dated 9th October, 2024 is bad in law and fatally defective for having been filed in a fresh suit which was not the matter whereby the bill of costs dated 30th April, 2024 was filed and neither was the ruling dated 26th September, 2024 delivered in the matter.
2. Harrison Musyoka Lusyola filed a Replying Affidavit sworn on 4th November, 2024 and deponed that he is one of the Applicant's partners. They filed a reference on 11th October, 2024 regarding a ruling delivered on 26th September, 2024. He further deponed that 10th October, 2024 being a public holiday,



cannot be construed to be a working day and cannot therefore be included in calculating the 14 days in tandem with Order 50 rule 2 and 3 of the [Civil Procedure Rules](#).

3. The Applicant stated that the reference having been filed on 11th October, 2024, was within the prescribed period of 14 days and in tandem with paragraph 11(2) of the [Advocates \(Remuneration\) Order](#) and urged the court to dismiss the preliminary objection with costs.

Respondent's Submissions

4. Counsel for the Respondent filed submissions dated 6th December, 2024 and opposed the application dated 9th October 2024 as being time-barred and fatally defective for failing to comply with Rule 11 (1) of the [Advocates Remuneration Order](#). This was on the ground that the notice of objection and application were filed after the lapse of the statutory time lines in breach of the law. Counsel further submitted that the Applicant first availed a notice of objection dated 9th October, 2024 when the Applicant filed the Replying Affidavit dated 4th November, 2024.
5. It was counsel's further submissions that the Honourable Taxing Officer/DR delivered her ruling on 26th September, 2024 and the Applicant/Advocate was required to give his letter of objection within 14 days of the said ruling which was by the 10th October, 2024. Counsel relied on the cases of [KCB Bank Limited & Another vs Yeswa Antony Joseph](#) [2022] eKLR and [Chege Wainaina T/A Chege Wainaina vs John Wairegi](#) [2007] KEHC 394 KLR.
6. Counsel submitted that where the Civil Procedure Rules apply, Sundays, Christmas Day, Good Friday and public holidays are not excluded in the computation of time. According to counsel, they are only excluded where the time for doing any act or proceedings is less than 6 days which does not apply to filing of the reference which is required to be filed within 14 days from receipt of the reasons of the ruling and relied on Order 11 (2) of the [Advocates Remuneration Order](#). Counsel submitted that the Applicant had access to the judiciary e-filing portal which is available 24 hours a day and the Applicant has no excuse for not complying with the 14 days' statutory timeline of filing the application.
7. Mr. Thuo further submitted that the Bill of Costs was filed under Nakuru ELC Misc. Application No. E018 of 2024 where the ruling dated 26th September 2024 was delivered while the application herein has been filed in a fresh suit being Nakuru ELC Misc. Application No. 045 of 2024 which is bad in law and renders the said application fatally defective.
8. Counsel relied on the case of [Independent Electoral and Boundaries Commission vs John Omollo Nyakongo t/a H.R Ganijee & Sons](#) [2020] KEHC 2148 (KLR) and urged the court to dismiss the application dated 9th October, 2024 with costs.

Applicant's Submissions

9. Counsel for the Applicant filed submissions dated 22nd November 2024 and identified the following issues for determination:
 - a. Whether the reference was filed out of time?
 - b. Whether there was compliance with paragraph 11(1) of the Advocates remuneration order?
 - c. Whether the suit herein is bad in law?
10. On the first issue, counsel submitted that the ruling was delivered on 26th September, 2024 by the Taxing Master and the 14 days lapsed on 13th October, 2024 which was a Sunday. Counsel submitted that Order 50 Rule 2 and Section 57 of the [Interpretation and General Provisions Act](#) excludes Sundays



and Public Holidays if the period given is less than six days and if the last day falls on any of those days. Counsel submitted that the 14 days lapsed on 14th October, 2024 hence the reference was filed within the stipulated time.

11. On the second issue, counsel submitted that there was compliance with paragraph 11 (1) of the *Advocates Remuneration Order* and in any eventuality the reasons therein had already been provided in the ruling of 26th September, 2024 of the taxing master. Counsel relied on the cases of *Vincent Kibiwott Rono vs Abraham Kiprotich Chebet & another* [2022] eKLR and *Abmed Nassir vs National Bank of Kenya Ltd* [2006] E.A.
12. On the third issue, counsel submitted that the jurisdiction of the Deputy Registrar is limited to taxing the bill of costs and giving reasons for the taxation. Further, the advocate being aggrieved with the ruling of the Taxing Master filed the present reference in court in compliance with paragraph 11(2) of the *Advocates Remuneration Order* that mandates parties to apply to a judge by chamber summons if aggrieved by the decision of the taxing master. Counsel relied on the cases of *Aoro vs Were* (Miscellaneous Reference Application E019 of 2022) [2022] KEHC 14628 (KLR) and *Gacau Kariuki & Co Advocates vs Allan Mbugua Ng'ang'a* [2012] eKLR and urged the court to dismiss the Preliminary Objection dated 31st October 2024 with costs.

Analysis And Determination

13. The issue for determination is whether the Preliminary Objection dated 31st October, 2024 has merit.
14. The Respondent contends that the Applicant/Advocate was in breach of Paragraph 11 (2) of the *Advocates (Remuneration) Order* 1962 for failing to first obtain the reasons for the Taxing Master's decision and then filing the present Reference and furnishing the said reasons. Further the reference was filed out of time.
15. Paragraph 11 (1) & (2) of the *Advocates (Remuneration) Order* 1962 provides that:
 - (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.
16. The Respondent abandoned the line of argument that the Applicant did not comply with the filing of a notice of objection and failure to seek and obtain reasons from the taxing master on her decision but pursued the line that the reference was filed outside the fourteen days allowed by the Rules.
17. The Applicant deponed that the ruling was delivered on 26th September, 2024 and the reference was filed on 11th October, 2024 which being a public holiday, could not be construed to be a working day and cannot therefore be included in calculating the 14 days as per Order 50 rule 2 and 3 of the *Civil Procedure Rules* which provide as follows:

Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day and Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.



18. Order 50, Rule 3 of the Civil Procedure Rules provides as follows:

Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof, such act or proceeding cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

19. The Applicant cannot rely on the above Order as it is that the Advocates Act is the legal regime governing taxation of costs whether party and party or Advocate/client and that the Advocates Act is a complete statute in itself on matters of taxation of costs and as such, a party cannot invoke the provisions of the Civil Procedure Act or Rules made thereunder for purposes of challenging any decision of the taxing officer.

20. In the Court of Appeal case of Machira & Co. Advocates vs. Arthur K. Magugu [2012] eKLR while referring to the High Court decision between the same parties as was held by Hon. Justice Ringera (as he then was) stated, inter alia:

“----with regard to the advocates bill of costs, we agree with the decision of Judge Ringera in Machira vs. Magugu (1) that the Advocates Remuneration Order is a complete code which does not provide for appeals from the taxing officer’s decision. Rule 11 thereof provides for ventilation of grievances from such decisions though references to a Judge in chambers - the effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used ---”

21. The Applicant can therefore not hide under the provisions of the Civil Procedure to explain the delay in filing the reference. In the case of Twiga Motors Limited v Dalmas Otieno Onyango [2015] eKLR, the court held that:

“The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failing to adhere with the said timelines would mean that the application would be rendered incompetent in the first instance.”

22. I associate myself with the above reasoning that there are reasons why the timelines were set and therefore must be adhered to. The Applicant admitted the reference was filed out of time while relying on Order 50 on computation of time and when time stopped running.

23. I have considered the submissions by counsel and find that the Applicant did not comply with Rule 11 (1) of the Advocates Remuneration Order and therefore uphold the preliminary objection dated 31st October, 2024 with the net effect that the Applicant’s Chamber Summons dated 9th October 2024 is hereby struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF FEBRUARY 2025.

M. A. ODENY

JUDGE

