



**County Government of Kilifi v Ricci (Environment & Land Case
9 of 2019) [2024] KEELC 13659 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13659 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 9 OF 2019
EK MAKORI, J
DECEMBER 9, 2024**

BETWEEN

THE COUNTY GOVERNMENT OF KILIFI APPLICANT

AND

DANIEL RICCI RESPONDENT

RULING

1. The Court's jurisdiction is of paramount importance. Without it, the Court is unable to proceed. As held in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, the Court must have jurisdiction to act:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
2. The Plaintiff filed a plaint on 27 March 2019, responding to which the Defendant filed his Notice of Preliminary Objection because the suit was res judicata. Consequently, the Court summarily dismissed the Plaintiff's suit with costs to the Defendants.
3. On 26 January 2023, the Defendant filed their Party and Party Bill of Costs dated 19 January 2023, seeking to be awarded Kshs. 53,028,675.00/-. The Plaintiff filed their Grounds of Opposition and submissions in response to the Bill of Costs on 18 May 2023.
4. Subsequently, the Deputy Registrar, vide Ruling dated 31 May 2023, awarded the Defendant costs of Kshs. 30,022,375.00/-. It was held that the Plaintiff never put in their objection. The plaintiff avers that the award and holding of the Tax Master, as will be demonstrated, are excessive and erroneous and should be set aside.



5. On 30 June 2023, the Plaintiff filed a Chamber Summons Application of even date under paragraph 11(4) of the [Advocate's Remuneration Order](#) and all other enabling provisions of law seeking orders that:
 - i. The Court be pleased to set aside the decision of the Taxing Master made on 31st May 2023;
 - ii. The Court be pleased to re-assess the fees due to item No. 1 of Bill of Costs dated 19 January 2023 and make a finding on the same;
 - iii. In the alternative, the Court orders that the Advocates Bill of Costs dated 19 January 2023 be referred for taxation to another Taxing Master with appropriate directions or the Court to make such orders as are just and fair in the circumstances and;
 - iv. The costs of and occasioned by the Reference be awarded to the Plaintiff.
6. Consequently, the Defendant filed the Notice Preliminary Objection dated 23 February 2024 that:
 - i. This Court lacks the jurisdiction to hear and determine this Reference as the same is time-barred in light of Rule 11(2) of the [Advocates \(Remuneration\) Order](#), 2014; and
 - ii. The Reference is incompetent as it was filed out of time.
7. The Court directed that parties dispose of the Preliminary Objections through written submissions. They complied.
8. From the averments and submissions by parties, I frame the issues for this Court's decision as whether the Reference is incompetent as it was filed out of time and whether this Court should exercise its inherent discretion and entertain the Reference application.
9. The Defendant is of the view that the jurisdiction to entertain the Reference stems from Rule 11 of the [Advocates \(Remuneration\) Order](#), 2014, which provides for the procedure for objecting to a taxation decision 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 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.
10. The Defendant states that the Taxing Master delivered the Ruling on 31 May 2023, and the Plaintiff filed its Chamber Summons on 30 June 2023, one month after the Taxing Master's Ruling. Thus, the application is incompetent as it was filed late. The decision in [Singh Gitau Advocates v City Finance Bank Limited](#) [2021] eKLR is cited where the Court held that when dealing with the issue of filing a Reference out of time, relying on the case of [Nyakundi & Company Advocates v Kenyatta National Hospital Board](#) [2005] eKLR where the Court held that:

“Under Rule 11(2) of the *Advocates (Remuneration) Order* quoted above, a definite time frame for filing a reference is given. It is fourteen days from the receipt of the reasons. If an Objector is delayed in making his/her reference, he/she may apply for enlargement of time to make the Reference under Rule 11(4) of the same Order.”



11. Defendant contends that despite being aware that the Reference was out of time, Plaintiff still filed the Reference without first applying for enlargement of time under Rule 11(2) of the *Advocates (Remuneration) Order* as expounded above.
12. Conversely, the Plaintiff's counsel contends that he tried to obtain a copy of the taxation Ruling delivered in their absentia. However, the process was delayed, resulting in the late filing of the Reference. The Reference was filed immediately after the counsel obtained a certified Ruling. Plaintiff herein believes it is not guilty of laches and stands to suffer prejudice. Suppose the bill is allowed as it is, it will place a burden of paying exorbitant costs to bear by it. Considering that the subject matter pertains to the public interest, it would align with public policy and equity principles to reduce the manifestly excessive costs awarded to the Defendant, albeit under discretion. The Defendant will suffer no prejudice if the Reference is allowed. If there will be any prejudice to the Defendant, which there is no prejudice, the same can be compensated by an award of costs.
13. The Plaintiff in the Reference before this Court has failed to address the enlargement of time as required by law. The same was not sought here or elsewhere in accordance with the framework laid in Rule 11(4) of the *Advocates (Remuneration) Order*, 2014, or this application.
14. That being the case and the Preliminary Objections raised being purely on the point of law, the same succeeds to the extent that the filed Reference herein is struck out with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 9TH DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Lugo, for the Appellants

Ms. Maina, for the Respondents

