



Republic v National Land Commission; Lake Naivasha Riparian Association (Interested Party); Wachira (Exparte) (Environment & Land Case 244A of 2018) [2023] KEELC 88 (KLR) (19 January 2023) (Ruling)

Neutral citation: [2023] KEELC 88 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 244A OF 2018
FM NJOROGE, J
JANUARY 19, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT

AND

LAKE NAIVASHA RIPARIAN ASSOCIATION INTERESTED PARTY

AND

DUNCAN KABETHI WACHIRA EXPARTE

RULING

1. This ruling is in respect of the *ex parte* applicant’s chamber summons application dated August 24, 2021. It has been brought under Rule 11(2) of the [Advocates \(Remuneration\) Order](#) and seeks the following prayers;
 - a. The ruling of the taxing officer delivered on June 9, 2021 be set aside.
 - b. The court exercises its inherent jurisdiction and re-taxes the bill of costs with respect to items 1, 3, 52, 53, 54, 56, 57, 58, 59, 71, 72, 76, 78, 106 and 109.
 - c. In the alternative to prayer No. 2 above, court remits the *ex parte* applicant’s bill of costs dated October 8, 2020 to a new taxing officer to be taxed afresh.
 - d. The costs of this application be provided for.



2. The application is supported by the affidavit of Winnie Songok sworn on 24/08/2021. The grounds on the face of the application and the supporting affidavit are that the ruling on taxation of the applicant's bill of costs dated 8/10/2020 was delivered on 9/06/2021; that by a letter dated 11/06/2021 the ex parte applicant gave a notice to the taxing officer pursuant to Rule 11(1) of the [Advocates \(Remuneration\) Order](#) of the ex-parte applicant's objection to the taxation on all the items of the bill of costs; that the ruling of the taxing officer was made available for collection on 12/08/2021 when it was paid for and collected and having reviewed the decision of the taxing officer, the *ex parte* applicant wishes to pursue a reference against the taxing officer's decision.
3. In response to the application, the respondent filed a replying affidavit sworn by Edmond Gichuru, its Director of Legal Affairs on 30/09/2021 and filed on 29/10/2021. He deposed that the taxing officer correctly assessed the instruction fees at a reasonable amount of Kshs. 200,000/= as per Schedule VI section 1(j) (ii) of the [Advocates Remuneration Order](#); that the said amount awarded was a fair assessment as the matter was straight forward and was not complex as alleged in the application; that it would not be fair to the respondent to give the applicant an award of Kshs. 1, 468,326.00/= as the respondent is a Constitutional Commission which is funded from the public coffers and therefore subject to the [Public Finance Management Act](#) and that paying exorbitant amounts in costs does not fit the bill of proper use of public funds.

Submissions of the Parties

4. The *ex parte* applicant filed his submissions dated 19/01/2022 on the same date while the respondent filed its submissions on 15/02/2022.
5. The *ex parte* applicant submitted that the taxing officer committed an error of principle by assessing the instruction fees at Kshs. 200,000/= as she failed to appreciate the nature and complexity of the matter. The applicant also submitted that the taxing officer also erred in taxing off items 52, 53, 71, 72, 76, 78 by holding that the length of a folio is equivalent to a page contrary to paragraph 17 of the [Advocates Remuneration Order](#) which provides that a folio is equivalent to 100 words.
6. It was the *ex parte* applicant's submissions that the taxing officer taxed off item No's 58 and 59 by failing to appreciate that these items were not similar to items No. 56 and 57 and therefore not a repetition. That the taxing officer taxed off item No. 96 and failed to consider that the said item was based under paragraph 7(b) of Schedule 6(A)(1) of the [Advocates Remuneration Order](#). The applicant also expressed grievance at the disallowance of item Nos 106 and 109 which were costs incurred in swearing the verifying affidavit of the applicant.
7. In support of his arguments the applicant relied on the cases of *Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and others* (No 3) [1972] EA 162, *First American Bank of Kenya v Shah and others* [2002] 1 EA 64, *R v The Minister of Agriculture ex parte Samuel Muchiri W'Njuguna & others* [2006] 1 EA 359 and [Republic v Kenyatta University & another ex parte Wellington Kibato Wamburu](#) [2018] eKLR.
8. The applicant submitted that the taxing officer failed to consider the authorities presented to it where in similar matters the court assessed instruction fees at a higher figure than what was awarded in this matter. He concluded his submissions by stating that the reduction by the taxing officer was far too high and has resulted in an injustice and therefore sought that the court assesses the instruction fees as drawn.
9. The respondent in its submissions stated that the instruction fees was fairly assessed at Kshs. 200,000/= as the matter was not complicated and neither did it raise any complex matters of law. It also submitted



that the Kshs. 200,000/= met the threshold for fair remuneration as was held in the case of *Premchand Raichand Ltd and another v Quarry Services of East Africa Ltd and others (supra)*. The respondent then reiterated the contents of its replying affidavit and prayed that the court dismisses the *ex parte* applicant's reference and uphold the taxing master's ruling on the bill of costs.

Analysis and Determination

10. After considering the application, the response thereto and the written submissions, the issues that arise for determination are whether there is a competent reference before the court and if in the affirmative, whether the court should set aside the decision of the taxing officer dated 9/06/2021.
11. Paragraph 11 of the [Advocates Remuneration Order](#) provides as follows on the procedure to be followed when a party is dissatisfied with the decision of a taxing officer:
 - (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.
12. The taxing officer delivered her ruling on 9/06/2021. Paragraph 11(1) of the [Advocates Remuneration Order](#) requires an applicant to give a notice in writing to the taxing officer on the items of taxation to which he objected to within fourteen (14) days. The applicant wrote to the taxing officer the letter dated 11/06/2021 seeking for reasons for the ruling. Upon perusal of the court file, there is no response from the taxing officer giving the reasons for her ruling. The *ex parte* applicant then filed the reference under consideration on 25/08/2021.
13. The court in the case of [Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited](#) [2012] eKLR held as follows:

“In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles.

However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference. Otherwise mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for reasons, as it happened in the case of *Kerandi*



Manduku & Company v Gathecha Holdings Limited Nairobi (Milimani) HCMA No 202 of 2005, where the taxing officer had left the judiciary. Where reasons are contained in the decision, I share the view that to file the reference more than 14 days after the delivery of the same would render the reference incompetent.

In the present case, the ruling on taxation was made on July 6, 2011. If the client considered the said decision to contain the reasons, he could file the reference within 14 days from the date thereof. If, on the other hand, he was of the view that there were no reasons contained in the decision, he could request for the same in writing, in which case, he would be bound to wait for the same. If, however, at a later stage he decided to prefer the reference notwithstanding the failure by the Taxing Master, after the lapse of the 14 day period, it is my view that he would be bound to apply for extension of time under paragraph 11(4) of the *Remuneration Order*, in which case one of the grounds if not the only ground would be the failure by the Taxing Master to furnish him with the reasons which, according to the decision in *Kipkorir, Titoo & Kiara Advocates (ibid)*, is a ground for allowing a reference. However, a party would not be entitled to an indefinite period within which to prefer a reference simply because the reasons were not given if even by the time of making the same reference, the said reasons have not been furnished.

I, accordingly, find that as the client filed the reference outside the 14 days of the delivery of the decision and before being furnished with the reasons, the reference is incompetent for being out of time and/or being prematurely instituted. I accordingly strike out the Chamber Summons dated January 18, 2012.

14. In this matter, the *ex parte* applicant took a period of 76 days from when the ruling for taxation was delivered which was on 9/06/2021 to 25/08/2021 when the reference was filed. As was held in the case of *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* (supra) quoted above, in the event that the taxing officer does not furnish his reasons and an applicant is desirous of filing a reference but the fourteen-day period has lapsed, then the applicant has to make an application under paragraph 11(4) of the *Advocates Remuneration Order* seeking for extension of time.
15. The *ex parte* applicant in this matter did not seek for extension of time to file the reference and it is therefore this court's view that there is no competent reference before it and the chamber summons application dated 24/08/2021 is hereby struck out with costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 19TH DAY OF JANUARY, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

