



Onguru v Director of Public Prosecutions & another; Oloo & another (Interested Parties) (Petition E003 of 2022) [2025] KEHC 5517 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
PETITION E003 OF 2022
AC MRIMA, J
APRIL 30, 2025**

BETWEEN

WILLIAM OCHANDA ONGURU PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

AND

ELIJAH AMOLLO OLOO INTERESTED PARTY

CHARLES ASIKOWA OKOLO INTERESTED PARTY

RULING

Background:

1. On 18th April 2023, the Taxing Officer delivered a ruling in respect of Charles Asikowa Okolo's, 2nd Interested Party herein, Party and Party Bill of costs. Aggrieved by the amount taxed off, William Ochanda Onguru, the Petitioner herein, lodged a reference vide the Chamber Summons dated 31st January 2024. The application was supported by his Affidavit deposed to on a similar date.
2. Charles Asikowa Okolo, the 2nd Interested Party herein, then filed an application by way of a Notice of Motion dated 28th February 2024, which sought to strike out the Chamber Summons with liberty to levy execution. Given its nature, the Notice of Motion was deemed as the 2nd Interested Party's response to the Chamber Summons.
3. The applications were heard by way of written submissions thereby resulting to this ruling.



The Applications:

4. The Court will first look at the Chamber Summons which sought the following orders: -
 1. That this honourable court be pleased to set aside the decision of the taxing officer made on 18th April 2023.
 2. That this honourable court be pleased to remit the party and party bill of costs dated 18th February 2023 to an alternative Deputy Registrar for fresh taxation, with directions on the conduct of taxation.
 3. That cost be provided for.
5. In the grounds and Affidavit in support of the Chamber Summons, the Petitioner claimed that he objected to the Taxing Officer's assessment of items 1, 2, 5, 6, 8, 9, 10, 12, 13, 15 and 23. It was his claim that on 29th April 2023, he filed a Notice of Objection to the Ruling of the Taxing Officer through the Court's email and the same was duly assessed and paid for on 2nd May 2023. The Petitioner pleaded that despite the expectation that the Taxing Officer would record reasons for her decision on the items he had objected to, the same was not done as required under Rule 11 (2) of the Advocates Remuneration Order. Further, the Petitioner averred that on 13th February 2023, the Taxing Officer, while delivering a ruling on the 2nd Interested Party's Notice to Show Cause why execution should not be undertaken, directed that the Petitioner to file a Reference within 30 days.
6. The Petitioner also stated that the Taxing Officer erred in failing to take into consideration its written submissions on the Party and Party Bill of Costs and proceeded on mistaken principles and consequently failed to exercise her discretion judiciously. It was his case that there were no demonstrable complexities or difficulties in the matter and there were no novel questions raised in the petition to justify instruction fees sought by the 2nd Interested Party.
7. The Petitioner also contended that the Taxing Officer failed to follow Rule 11(2) in part 1 of the Advocates (Remuneration) Order General Matters. In the end, the Petitioner prayed that the Notice of Motion be dismissed with costs and that the Chamber Summons be allowed accordingly with costs.
8. Next is a consideration of the Notice of Motion which sought the following reliefs: -
 1. That the Petitioner/Judgment debtor's Chamber Summons Application dated 31st January 2024 and filed on 7th February 2024 being the Petitioners/Judgment Debtor's Reference be struck out.
 2. That the 2nd Interested Party/Decree Holder/Petitioner be allowed to proceed with execution of the decree and the Petitioner /Judgment Debtor be arrested and committed to civil jail until payment of the decretal sum in full.
 3. The costs of this Application be provided for.
9. Through the grounds and affidavit in support of the application, the 2nd Interested Party claimed that the Petitioner filed the Chamber Summons 10 months after the delivery of the impugned ruling, a period which he argued was inordinately long, and that no leave to extend time was sought prior to filing of the Chamber Summons as mandated under Rule 11(4) of the Advocates Remuneration Order. He further asserted that the Taxing Officer lacked jurisdiction to extend or enlarge time for the filing of the Reference. In the supporting Affidavit, he deposed that after delivery of the Ruling in the taxation, he was served on 5th May 2023 with a notice of Objection to the decision of the Taxing Officer dated 29th April 2023.



10. Despite the foregoing, the 2nd Interested Party averred that the Petitioner never filed a Reference or an Application to set aside the Ruling of the Taxing Officer as required under the law and that the Petitioner only woke up from slumber when he obtained a Certificate of Taxation dated 8th June 2023 and served a Notice to Show Cause why execution should not issue. He further deposed that the Taxing Officer, despite not having jurisdiction, granted orders directing the Petitioner to file a reference within thirty days from the date of delivery of the ruling failure which executing would issue. It was his case that the Taxing Officer did not have jurisdiction to extend time since such powers are vested in the High Court under Rule 11(4) of the Advocates Remuneration Order. The 2nd Interested Party argued that the Taxing Officer ought to have limited her adjudicatory powers to the Notice to Show Cause and the Petitioner ought to have approached this Court for enlargement of time to file a reference.
11. Based on the above, it was argued that the Petitioner improperly filed the Chamber Summons without leave of the High Court and such it ought to be struck out with costs.
12. In conclusion, the 2nd Interested Party posited that equity aids the vigilant not the indolent. It claimed that the Chamber Summons is an abuse of the Court process and only intended to curtail the realization of its Ruling. He urged that the Chamber Summons be dismissed with costs and that the Notice of Motion be allowed with costs.
13. The Petitioner and the 2nd Interested Party filed written submissions dated 31st May 2024 and 7th June 2024 respectively. The arguments therein are considered and engrained in the analysis section of this ruling.

Analysis:

14. Having carefully considered the twin applications, the parties' written submissions and the decisions referred to therein, this Court discerns that there is only one main issue for determination in this ruling which is whether either of the applications is merited. However, before venturing into that discussion there seems to be a preliminary issue on the propriety of the Chamber Summons, which this Court will, in the first instance deal with.
15. It was the 2nd Interested Party who challenged the propriety of the Chamber Summons in contending that the Taxing Officer did not have jurisdiction to purport to enlarge time for the Petitioner to file a reference before this Court.
16. As a precursor, it is imperative to appreciate the legal anchorage of the Petitioner's Chamber Summons. The application was founded on Paragraph 11(2) of the Advocates (Remuneration) Order which provides as follows: -
 11. Objection to decision on taxation and appeal to Court of Appeal
 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. (emphasis added).
17. The foregoing provision, therefore, guides the process to be followed and sets the timelines within which such a reference must be lodged. From a scrutiny of the prayers in the Chamber Summons, the Petitioner is not seeking an appeal against the decision of the Taxing Officer, but instead seeks to set aside the Taxing Officer's decision and to remit the party and party bill of costs to a different Taxing Officer for re-consideration. As said earlier, the Petitioner's case revolves around the allegation that the Taxing Officer did not record and forward to the Petitioner the reasons for his decision on the items he contested to enable him lodge a reference.
18. The Chamber Summons, therefore, is not a merit-based reference as contemplated under Rule 11(2) above, but it rather questions the process adopted by the Taxing officer and on that basis, the Petitioner requests for a re-taxation of the Party and Party Bill of Costs by a different Taxing Officer.
19. According to the record, upon the delivery of the ruling on the taxation of the Bill of Costs, the Petitioner lodged a Notice of Objection to the Taxing Officer on 29th April 2023. That was via the Court's email, which was assessed and duly paid for. The Petitioner, therefore, filed the notice 11 days post the ruling, a period well within the timeline envisioned in paragraph 11 of the Advocates Remuneration Order.
20. Going forward, this Court affirms the position that a Taxing Officer is only divested of jurisdiction once he or she has given reasons for his/her ruling on taxation and thereafter the superior Court is seized of the jurisdiction on the reference. [See Otieno, Ragot & Company Advocates -vs- Kenya Airports Authority [2015] eKLR, Patrick Sagwa Kisia t/a Steg Consultants v Advocates (Miscellaneous Application E1112 of 2020) [2022] KEHC 11294 (KLR) (Civ) (5 May 2022) among many others].
21. In this case, the taxing officer is yet to give the reasons sought by the Petitioner and it is for that reason that the Petitioner seeks this Court to forestall any further processes until the law is complied with. Therefore, for purposes of paragraph 11(2) of the Advocates Remuneration Order, unless the reasons sought by a party dissatisfied with the taxation are given by a taxing officer, time within which the dissatisfied party ought to file a reference does not start running. As such, the contention that the Reference herein was filed outside the 14-day window is erroneous since the time contemplated in law is yet to start running. The argument by the 2nd Interested Party, hence, fails and is hereby dismissed.
22. Having settled the preliminary point, suffice to say that it goes without saying that the Chamber Summons is merited whereas the Notice of Motion must fail. With utmost respect, the taxing officer ought to accord with the law and favour the Petitioner with the reasons on the taxation or to indicate if the reasons were in the ruling if that were the case. Unless such a peremptory requirement of the law is complied with, it will be remiss of this Court to allow execution against the Petitioner and, on the basis of a taxation which the Petitioner is clearly contesting.
23. This Court now believes that it has said enough to safely dispose of the twin applications.

Disposition:

24. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer



from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.

25. In the premises, this Court makes the following final orders: -
- a. The Notice of Motion dated 28th February 2024 is hereby dismissed with costs.
 - b. The Chamber Summons dated 31st January 2024 is merited to the extent that the Taxing Officer is hereby directed to give reasons for the Ruling dated 18th April 2023 within 30 days hereof. This Court hereby enlarges the time since the physical Court file has to be transmitted from Nairobi to Kitale.
 - c. The 2nd Interested Party shall bear the costs of both applications.
26. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

