



**Siror & another v Chemjor (Environment and Land Miscellaneous.(Reference)  
Application 066 of 2023) [2024] KEELC 1378 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1378 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND MISCELLANEOUS.  
(REFERENCE) APPLICATION 066 OF 2023  
FO NYAGAKA, J  
MARCH 12, 2024**

**BETWEEN**

**MICHAEL BETT SIROR ..... 1<sup>ST</sup> APPLICANT**

**BETHAM INVESTMENT LTD ..... 2<sup>ND</sup> APPLICANT**

**AND**

**VERONICAH CHEMJOR ..... RESPONDENT**

**RULING**

1. The Chamber Summons before me was filed on 05/06/2023. It was brought under Rule 11 (1) and (2) of the [Advocates' Remuneration Order](#) and all other enabling provisions of law. It sought, among other reliefs, that:-
  - a. ...spent.
  - b. That this Honourable Court be pleased to grant the Applicants leave to file their letter of Reference to the Deputy Registrar out of time.
  - c. That the letter of reference dated 11<sup>th</sup> day of May 2023 and filed the same date be deemed as duly filed.
  - d. That leave be granted to the applicants herein to file Miscellaneous Reference Application against the Ruling of the Deputy Registrar delivered on 25<sup>th</sup> day of AprilM` 2023.
  - e. That this Miscellaneous Reference Application be deemed as duly filed.
  - f. ... Spent



- g. That the decision of the Deputy Registrar as evidenced in the Ruling delivered on the 25<sup>th</sup> day of April 2023 with respect to items 1-11, 20-40, 41-60, 70-92, 95-111 and 132-167 in the 12<sup>th</sup> Interested Party's Bill of Costs be set aside and taxed afresh by this Honourable Court.
- h. That the costs of this Application be provided for.
2. The Application was based on the grounds that the Deputy Registrar delivered the Ruling in respect of the 12<sup>th</sup> Interested Party's Party-to-Party's Bill of costs in the absence of the Applicants and without notice to them; the Applicants learnt of the Ruling on 11/05/2023; by that time the statutory 14 days' period had expired; the Applicants issued a notice to the Deputy Registrar the same date of 11/05/2023; the Applicants had been inquiring about the Ruling; it was in the interest of justice that leave be granted to file the reference letter for the Deputy Registrar to give reasons for his decision; the Applicants were aggrieved of the decision in respect of the items in the Bill which are shown; no reasons were given in the Ruling; the taxation was overly exaggerated, oppressive and unreasonably high; the Respondent was an Interested Party in Petition No 5 of 2017.
3. The applicable law on instructions fee was not followed hence offended Schedule 6 Rule 1(j) of the *Advocates Remuneration Order 2014* and Section 26 (1) and (2) of the *Constitution of Kenya (Protection Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*; he reproduced Section 6 Rule 1(j) and what it provided for in instructions fees; that the award of Kshs 500,000/= was grossly high; the award by the Deputy Registrar to the 12<sup>th</sup> Interested Party for attending court to file his own documents for leave was erroneous; the award for costs of the hearings was punitive given that the matter proceeded by way of affidavits; the award of costs when the court was not in session too was erroneous; the award of costs more than once was erroneous; the 12<sup>th</sup> Interested Party had obtained a certificate of costs in readiness for execution.
4. The application was supported by the Affidavit of one David Kipchumba Siror, sworn on 05/06/2023. It repeated the contents of the grounds of the application save that to it were additions such as the deposition that the letter for reasons to be given over the decision of the Deputy Registrar was written out of time. He annexed and marked as DKS-1 a copy of the letter. Also, that absence from court on the date of the Ruling was not intentional since he was not invited to take the Ruling. That the Deputy Registrar gave different opinions on instructions fees over the same Petition hence incorrect in law. The law recognized the right of appeal hence it was proper to grant the prayers sought. The Applicant was likely to suffer irreparable losses and damage yet the application was made in good faith.
5. The Application was opposed vehemently. The Respondent swore a Replying Affidavit on 14/12/2023 and filed it the following date. In it she deponed that the Application was not factual and lacked material disclosure which was a design to mislead the court. That the Respondent filed a Bill of Costs dated 27/05/2022 by which she sought Kshs 7,569,472/=. She annexed and marked VCL-1 a copy of the Bill. The Deputy Registrar ruled on 25/04/2023 that Kshs 701,065/= was appropriate. She deponed that there was no error in principle in the Ruling and the amount was not excessive. That the instructions fees was reasonable based on the prayers in the Petition and the value of the subject matter, the complexity of the case, the amount of time and volume of documents which required great preparation. The reduction or increment of the instruction fees was in the discretion of the taxing master.
6. She deponed that the fact that the Interested Party was an interested party does not negate the fact that she deserved costs given that the Applicants are the ones who enjoined her thereby compelling her to file documents and seek leave of the court to file them out of time and serve numerous parties.



7. In regard to the filing of objection to the taxation she stated that the period was 14 days of the delivery of the same but the Applicants had not given sufficient and persuasive reasons for the delay which was deliberate. That the Applicants had not demonstrated that they made efforts to obtain certified copies of the Ruling. That extension of time was not a right. That the Applicant also sought a stay of execution yet no security had been given. Further, that setting aside a Ruling was a discretionary act and the Applicants had not discharged the burden of doing so satisfactorily. That the Deputy Registrar captured the reasons and that was the basis for which the Applicants wanted to file the reference hence they cannot say they were not given the reasons. That to allow the application would greatly prejudice the Respondent given the time the matter had taken since he was a teenager to the conclusion of the decision. The application was devoid of merit and a waste of the court's time.
8. The Application was disposed of by way of written submissions. The Applicants filed theirs on 02/10/2023 while the Respondent filed hers on 15/12/2023. I will consider the submissions as I determine the issues I identify for determination.

### **Issues for Determination**

9. I have considered the application, the law and the rival submissions of the parties. The issues that commend for determination are whether the prayer for leave to file a reference out of time is merited; whether the letter dated 11/05/2023 is properly on record in the parent file; whether there is a Miscellaneous Reference filed and if so, whether it is properly on record; who to bear the costs of the instant application.
10. I begin with the first issue which is whether the application is merited, this Court considers first the law regarding the steps to be taken on taxations before a taxing master. Where a Bill of Costs is presented to a taxing master who makes a decision thereon and a party dissatisfied with the taxation wishes to object to the whole or part thereof, the *Advocates Remuneration Order* provides on the steps to be followed. Paragraph 11 (1) and (2) of the *Advocates Remuneration Order* stipulates 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.”
11. It goes without saying that a party aggrieved by the decision of a taxing officer who wishes to lodge an objection to it is obligated to give notice in writing to the taxing master. This should be within 14 days of the decision of the taxing master. The notice should indicate or specify the items he or she objects to.
12. Upon receipt of the objection, the taxing master shall give him or her the reasons for the taxation. Similarly, upon the objector or aggrieved party receiving the written reasons, he must, if he intended to continue with the objection, file within fourteen days of receipt of the reasons, apply to a judge setting out the grounds of the objection. What that means is that the Reference must be filed only after the taxing master has given the reasons for his/her determination and not earlier. Similarly, it means that as long as the reasons, if asked for in time, or the fourteen days after the giving of the reasons have not elapsed, execution should not issue because the taxation has not crystallized: time for appeal shall have not ended. Also, without the reasons, the judge shall have nothing to fault the taxing master's decision on or approve of it.



13. In the instant application, the Applicants argue that the Ruling was delivered ex parte on 25/04/2023 and no notice was given to them of the notice. He contended that he knew of the Ruling on 11/05/2023 by which time the period for writing the objection had elapsed. Nevertheless, he wrote a letter dated the same date, requesting for the reasons for the determination of the Bill of Costs as given on the material date of the delivery of the Ruling.
14. The Respondent opposed the application arguing that the Applicants were economical in the truth they gave the court and that they were misleading it. That they did not give satisfactory reasons for the delay in asking for the objections. The applicants submitted that the Court had discretion to extend the time for filing and service of the Reference. They relied on paragraph 11 (4) of the Remuneration Order which provides that the High Court shall have power to enlarge the time fixed by subparagraphs (1) or (2) for taking any steps and the application shall be by way of Chamber Summons. They relied on the decision of the Court of Appeal in Kenya Airports Authority & another v Timothy Nduvi Mutungi, Civil Application No NAI 165 of 2013 (UR 113/2013) (2014) eKLR and the Supreme Court of Kenya one of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR.
15. They then argued that mistakes of the advocate should not be visited on them. They relied on the case of Rajesh Rughani v Fifty Investments Limited & another [2016] eKLR. On this they submitted that they attributed the delay in filing the Notice of Objections and Reference to omission on the part of their advocates. They prayed that such an error should not prejudice their right to appeal. Further, that the delay was as a result of a fault of the Advocate in the conduct of the matter and the applicants should not be blamed for the delay.
16. On her part the Respondent submitted that the Application herein did not comply with the timelines and having filed the application on 05/06/2023 that was late. Also, that the Applicants did not give any plausible reason for the delay. She submitted further that the holding in the County Executive of Kisumu v County Government of Kisumu and 8 others [2017] eKLR should apply.
17. It is not disputed that the Applicant's learned counsel wrote a letter dated 11/05/2023 requesting the taxing officer to supply them with the reasons for the Ruling. But before this Court delves into finding whether or not the Applicants gave sufficient reasons for the delay in writing to the taxing master for the reasons of his decision, it is worth noting that the letter dated 11/05/2023, annexed as DKS-1, does not comply with Section 11 (1) of the Advocates Remuneration Order. Its contents at the relevant part were, "Our client is dissatisfied with the said award and has instructed us to file a reference to the Honourable Judge. Kindly let us have reasons as to why you allowed the same as per the certificate of taxation signed on 25/04/2023."
18. Clearly, the letter does not in any way specify the items which the Applicants object to. This is a defective objection, even if it would be taken to have been filed within the time. It is difficult for the taxing master to underscore the items that are objected to, if any.
19. That aside, the question that this Court asks is, how did the Applicants get to know of the decision of the taxing master? Again, when did learned counsel know of the same and seek instructions on them and get them in order to write the letter dated 11/05/2023. In my view, and I agree with the Respondent, the Applicants deliberately withheld this important information so that to mislead the Court. What is more on that is that the Applicants themselves submitted that the delay in writing the letter for objection and even filing the reference was a mistake of their learned counsel. This actually lends credence to the Respondent's contention that the Applicants were economical in truth. Their submission on the issue leaves the court with many unanswered questions, some being, when did the learned counsel who made the mistake know of the delivery of the Ruling? How did he? When did



he commit the mistake which the Applicants seek the discretion of the Court not to be visited on them? What remedy did Applicants seek from learned counsel who allegedly made the mistake? Which learned counsel actually made the error given that the firm of M/S Walter Wanyonyi & Co. Advocates was the one that wrote the letter dated 11/05/2023 but the firm of M/S Katwa Kemboi Advocates was the one that drew the Application on behalf of the Applicants? Why did learned counsel who allegedly erred not swear an affidavit to admit to the error and indicate therein how and why he made it, so as to answer many of the questions above? Given these many gaps left by the paucity of the depositions of the Applicants, this Court cannot be prepared to agree with them that they have given reasons satisfactory over the delay in giving objections to the Ruling of the taxing master.

20. One point before I move completely from the above issue: it is not meritorious at all for any party to aver or depone that his learned counsel made an error or mistake which should not be visited on him. Courts have moved and should continue to move away from those days where litigant's blanket unsubstantiated claims of (an) error(s) having been committed by learned counsel used to be waved before the Court like the wave offering (of the first fruits) used to be done in the house of Israel (Exodus 29:24; Leviticus 8: 27) and their sacrifice would be accepted of God for a blessing of the harvest they would make. Courts should interrogate whether the 'wave offering(s)' of litigants when it comes to such claims is/are pure, untainted and true or is (mixed with) poison subtly designed and made (up) for purposes of killing the adverse party's live fruits of judgment or decision.
21. In this day and age of transparency and free exchange of information, it is important that when a party alleges that his learned counsel made a mistake in the process of representing him or her, he should point out with specificity what kind of a mistake that was and call upon the advocate to own to it. If the advocate does not own it, the burden lies on the party alleging that his learned counsel made the error or mistake to convince the Court to satisfaction that indeed the learned counsel made the mistake alleged. Otherwise, a party asserting an error on the part of learned counsel must bear the mistake: there should be no scapegoats, no hiding behind learned counsel, and no blanket blame.
22. The Applicants prayed that the letter dated 11/05/2023 be deemed properly on the record, and that the Reference herein be deemed as much. First, it is important to underscore the point that there is no reference that has been filed herein. If the Application before me is the one to be deemed as a Reference, then it is an incompetent application which must be dismissed in limine. This is because, times without number, courts have stated that documents filed without leave of the Court are a nullity since that they are illegal. They cannot be salvage by being deemed properly filed.
23. In the case of *Nicholas Kiptoo Korir Arap Salat v Independent Electoral & Boundaries Commission & 7 others*, [2014] eKLR, the Supreme Court stated as follows;

“where the law provides for the time within which something ought to be done, if that time lapses, one needs to first seek extension of that time before he can proceed to do that which the law requires.

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such 'an appeal', is tantamount to moving the Court to remedy an illegality. This, the Court cannot do. To file an appeal out of time and seek the Court to extend time is presumptive and in-appropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the 'document' so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court.”



24. The same Court has in the case of *Gilbert Mwangi Njuguna v Judicial Service Commission & Attorney General* (Petition 10 of 2019) [2020] KESC 52 (KLR) (7 February 2020) (Ruling) held as follows:-

“In the circumstances, therefore, strictly, there is no valid Petition of Appeal on record. It follows that the present application for leave of extension of time to file a Supplementary Record out of time is not founded on any substantive proceedings. It is hanging in the air without any roots or foundation.”

25. In the instant case, the Applicants prayed that the Court, by application of Rule 11(4) of the *Advocates Remuneration Order*, extends leave to deem the letter dated 11/05/2023 and the Reference herein as properly filed. With the guidance from the above cited authorities I find no basis to exercise discretion to grant the two prayers sought. I reject them. Even as I do, it is worth repeating that I have not been convinced that the Applicants did not know of the delivery of the Ruling in time but chose to ignore acting on it in the manner they now ask that the Court to permit - writing an objection to the determination and requesting for reasons for determination. They knew the reasons early, decided to indolently act and now they come for extension of time. The Court refuses the prayers for reason of not being merited.

26. Lastly, since I have indicated that there is no reference before me, there is no basis to consider setting aside the decision of the taxing master. Further, there is no basis for me to consider whether or not the taxing master erred in his decision, was incorrect, or whether the amount was grossly excessive or inordinately high. For that reason and the earlier ones, I find the application filed on 05/06/2023, dated 2<sup>nd</sup> day of (dash) month of 2023, that is to say, with no month indicated but supported by the Affidavit sworn by David K. Siror on 05/06/2023 unmerited. I dismiss it with costs to the Respondent.

27. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 12TH DAY OF MARCH, 2024.**

**HON. DR.IUR FRED NYAGAKA**

**JUDGE, ELC, KITALE.**

