



**Kieng & another v Karimi & 5 others (Miscellaneous Civil Application
E039 of 2022) [2023] KEHC 19096 (KLR) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E039 OF 2022**

EM MURIITHI, J

JUNE 26, 2023

BETWEEN

KOSKEI KIENG 1ST APPLICANT

WU XIANG 2ND APPLICANT

AND

EVA KARIMI 1ST RESPONDENT

REBBECA MWONJA LUMIRI 2ND RESPONDENT

JUDY LEBUTE 3RD RESPONDENT

TONNY GITONGA 4TH RESPONDENT

KENFREY MWITI MBAE 5TH RESPONDENT

JOHN LUMIRI 6TH RESPONDENT

RULING

1. The Respondents have raised a preliminary objection to the application dated 23/6/2022 on grounds that, “The application is incompetent, misconceived, bad in law and an abuse of the court process; The application offends order 11 (2) of the *Advocates Remuneration Order* (2014) as the application to file reference has been filed 21 months thus one year nine months from the date the Taxing Officer delivered her ruling on the October 13, 2020; The application offends Section 7 of the *Civil Procedure Act* on res judicata the same application was filed in Githongo Law Courts civil case number 50 of 2018 which was dismissed with costs to the respondents and the ruling is attached by the applicants in the application; The application is fatally and incurably defective, bad in law, lacks merit, an abuse of the process of the Court and is frivolous and vexatious; The period of limitation for filing a Reference is fourteen (14) days from the time when the reasons for the Ruling by the Taxing Master are given the Applicant herein filed this Reference one year and nine months after said reasons had been supplied



which amounts to inordinate delay making the Applicants guilty of laches; The procedure for the challenge of the results of taxation is provided under paragraph 11 of the *Advocates (Remuneration) Order* which 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.”
2. The Respondents urge that the intended reference is time barred as it offends order 11 (2) of the *Advocates Remuneration Order* (2014) as the application to file the reference has been filed more than 21 months from the date the taxing officer delivered her ruling on October 13, 2020, and the prolonged delay is clearly inordinate and the leave to file it out of time ought not to be allowed. They urge that the intended reference is res judicata because the issues raised therein were already litigated and determined in Githongo CMCC No 51/2018, which decision was never appealed against. They fault the Applicants for failing to demonstrate any viable reason why the reference was not filed in time, and cite *Machira & Co Advocates v Arthur K Magugu & another* (2018) eKLR, *Ahmednasir Abdikadir & Co Advocates v National Bank of Kenya (2)* (2006) EA 5, *Twiga Motor Limited v Hon Dalmas Orieno Anyango* (2015) eKLR and *County Executive Officer Kisumu v County Government of Kisumu & 8 others* (2017) eKLR.

Analysis and Determination

3. The issues for determination are whether the preliminary objection was properly raised.
4. For a matter to be deemed to be res judicata, the issues before the court must be the very same ones the court previously dealt with and finally determined. This court finds that the issue determined by the trial court was whether the party and party bill of costs dated 7/7/2022 was defective for assuming that two separate suits emanated from CMCC No 51/2018 in contravention with paragraph 62 and Schedule VII of the *Advocates Remuneration Order*. That is vividly not the issue before the court now, and therefore the issue of res judicata does not arise.
5. The trial court on 24/1/2022 dismissed an application by the Applicants seeking review and setting aside of the certificate of costs issued on October 12, 2020 on the ground that the same were erroneous as they failed to comply with the provisions of paragraph 62 and Schedule VII of the *Advocates Remuneration Order*. The record is clear that the said ruling was delivered in the absence of the parties and their counsel. The Applicants once again filed a preliminary objection before the trial court dated 22/7/2022, on the grounds that the party and party bill of costs dated 7/7/2022 was fatally defective as it assumed that 2 separate suits emanated from CMCC No 51 of 2018 in contravention with paragraph 62 and Schedule VII of the *Advocates Remuneration Order*. The preliminary objection was similarly dismissed on 5/10/2022 in the presence of counsel.
6. The Applicants contend that they learnt of the ruling of 24/1/2022 on 13/6/2022 after which they lodged their application dated 23/6/2022 on 27/6/2022. The court has seen the letter from the Respondents’ counsel dated 8/6/2022 seeking payment of the assessed costs which was received by the Applicants’ counsel on 13/6/2022.



7. This court finds that substantive justice would be rendered to the parties herein if the application dated 23/6/2022 is heard and determined on its merits.

ORDERS

8. Accordingly, for the reasons set out above, the court finds that the preliminary objection dated 26/7/2022 has no merit and it is struck out.
9. Costs in the cause.
10. Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/S. Oketch Advocate for Respondent.

Ms. Mukami Advocate for Applicant.

