



**Muasa v Kisini Nzyuko & Co Advocates (Environment and Land Miscellaneous Application E037 of 2024) [2025] KEELC 1471 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1471 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E037 OF 2024  
AY KOROSS, J  
MARCH 25, 2025**

**BETWEEN**

**SAMMY MAITHYA MUASA ..... APPLICANT**

**AND**

**KISINI NZYUKO & CO ADVOCATES ..... RESPONDENT**

**RULING**

**Applicant's case**

1. This ruling seeks to determine the chamber summons dated 30/08/2024 filed by the applicant. Some of the reliefs sought are spent, and the following residual prayers are pending determination: -
  - a. The taxing officer's ruling which was delivered on 21/08/2024 in Machakos misc. application no. E016 of 2024 and the certificate of taxation arising thereon should be set aside/vacated.
  - b. This Hon. Court be pleased to assess/tax the costs lawfully payable to the respondent.
  - c. The costs of the summons be borne by the respondent.
2. The motion is supported by the grounds set out in the body thereof and reiterated in the supporting affidavit of the applicant deposed on 30/08/2024.
3. In the summary of both, he stated the taxing officer erred in principle and law in making the decision, failed to consider his replying affidavit and submissions, and failed to apply relevant provisions of the *Advocates Remuneration Order* in assessing the bill of costs.
4. Additionally, he averred the taxing officer erred in principle when she presumed the scope of instructions by the applicant to the respondent, and lastly, the amounts taxed were not anchored in law.



## **Respondent's Case**

5. The respondent strenuously opposed the summons by filing an affidavit deposed on 24/09/2024 by counsel Benard Nzyuko Mutiso.
6. Counsel defended the decision of the taxing officer and contended there was no error in the award and the summons was intended to delay the settlement of the award.
7. According to him, the taxation proceedings emanated from a conveyancing transaction of Ksh. 8,000,000/-, which was to be subjected to the 2014 Advocates Remuneration Order and asserted the respondent was entitled to the taxed amount.

## **Parties' Submissions**

8. The court directed the parties to file written submissions. In compliance, the law firm of M/s. D.M. Mutinda & Co. Advocates, who are on record for the applicant, filed written submissions dated 17/01/2025, and the respondent filed written submissions dated 30/09/2024.
9. Therefore, upon identifying and considering the issues for determination, this ruling shall, later on in its analysis and determination, consider the arguments contained on the particular issue and also bear in mind the law and judicial precedents.

## **Issues for Determination.**

10. I have carefully considered the summons, its grounds, affidavits and the rival submissions, and the following issues, which shall be handled separately, arise for determination.
  - a. Whether the summons is filed prematurely.
  - b. Whether the summons is merited.
  - c. What orders should this court issue, including an order as to costs?

## **Analysis and Determination**

### **(a) Whether the summons is filed prematurely.**

11. The respondent addressed me on this issue, but for some reason, the applicant refrained from dealing with it.
12. As rightfully pointed out by the respondent in his submissions, once a bill of costs has been taxed off by a taxing officer and if aggrieved by this decision as the applicant is, he is usually guided by Order 11 of the *Advocates (Remuneration) Order*. This provision of law provides an elaborate procedure by stating thus: -
  - “ 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.”
13. From the face of the motion, the applicant has moved this court under several provisions of law, including the provision of Order 11 (4) of the *Advocates (Remuneration) Order*, which deals with the extension of time yet the summons was filed on 9/04/2024 which was within time. It can only be concluded that there was an oversight in citing this proviso.
  14. However, having considered the summons that is before this court, I agree with the respondent there is no evidence whatsoever that the applicant ever issued a notice in writing to the taxing officer of the items of taxation to which he objects as required by Order 11 (1) of the *Advocates (Remuneration) Order*.
  15. My understanding of this provision of law is that the filing of a notice of objection on items of taxation is a mandatory pre-emptive step, and the applicant ought to have done so within 14 days from when the ruling was rendered.
  16. Once this hurdle is met, then the applicant moves to the next stage, which is obtaining reasons as envisaged by Order 11 (2) of the *Advocates (Remuneration) Order*.
  17. Being guided by the persuasive decisions of *Ahmednasir Abdikadir & Co. Advocates v. National Bank of Kenya Limited* (2) [2006] 1 EA 5 and *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* [2012] KEHC 4274 (KLR), I am of the humble view if the applicant considered the ruling of the taxing officer contained sufficient reasons, he could file the reference within 14 days from the date thereof.
  18. Nevertheless, if he was of the view the ruling did not contain sufficient reasons or did not contain any reasons whatsoever, then he could, in writing, ask for further reasons or reasons as the case may be but must file the reference within 14 days upon such receipt.
  19. In the circumstances of this case, the applicant skipped an essential step, as no objection was ever raised with the taxing officer.
  20. In my humble opinion, the applicant acted prematurely and pre-empted the lodging of an objection and in the absence of the notice of objection to the taxed items, which is a grave omission, I find the reference herein is incompetent, null and void *ab initio*.
  21. In the end, and having found the summons incompetent, it is unnecessary to address issue (b) while on issue (c), I hereby strike out the chamber summons dated 30/08/2024 with no orders as to costs. This file is hereby effectively marked as closed.

It is so ordered

**DELIVERED AND DATED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF MARCH, 2025.**

**HON. A. Y. KOROSS**



**JUDGE**

**03.2025**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Mr. Gudamati holding brief for Mr. Nzyuko for respondent advocate.

Miss Sibika holding brief for Mr. Musyimi for applicant.

Ms Kanja- Court Assistant

