



REPUBLIC OF KENYA



KENYA LAW
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**Family Bank Limited & another v Owuor (Miscellaneous Civil Application
E036 of 2022) [2023] KEHC 2287 (KLR) (27 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL APPLICATION E036 OF 2022**

KW KIARIE, J

MARCH 27, 2023

BETWEEN

FAMILY BANK LIMITED 1ST APPLICANT

MUGANDA WASULWA T/A KEYSIAN AUCTIONEERS 2ND APPLICANT

AND

DAVID OMONDI OWUOR RESPONDENT

JUDGMENT

1. The applicants filed a reference dated July 22, 2022 challenging the ruling and order of the taxing master dated June 29, 2022. The reference was brought by way of Chamber Summons pursuant to Rule 11 (2) of the *Advocates Remuneration Order*. They are seeking the following orders:
 - a. That this honorable court be pleased to set aside the ruling delivered by the honorable Deputy Registrar, TM Olando (Taxing Master”) on the 29th of June 2022 in respect of the respondent’s Bill of Costs dated the 7th day of February 2022 (“Bill of Costs”) on items 1, 5, 6, 7, 8, 9, 10, 11, 12 and 13.
 - b. That this honorable court be pleased to refer the matter back to the Taxing Master or before another Taxing Master with directions as to the proper manner of taxation.
In the alternative to prayer 2 hereinabove:
 - c. That this honorable court be pleased to tax items 1, 5, 6, 7, 8, 9, 10, 11,12 and 13 of the Bill of Costs in accordance with the established principles for taxation.
 - d. That the costs of this application be provided for.
2. The application was premised on the following grounds:



- a. That on 8th day of February 2022 the respondent filed his party and party bill of costs dated the 7th day of February 2022 (“Bill of Costs”) in HCCA No E051 of O2021, Homa Bay being Family Bank Limited and another –vs- David Omondi Awour.
 - b. That by a ruling delivered by the honorable Deputy Registrar TM Olando (“Taxing master”) on the 29th day of June 2022 the respondent’s bill of costs was taxed at the sum of k shs 542,006.32/-.
 - c. That the applicants’ advocates have on different occasions written to the Taxing master requesting for reasons for the ruling.
 - d. That the learned Taxing Master has to date not provided reasons for the Ruling as requested.
 - e. That in his ruling the Taxing master erred in law and in fact by failing to appreciate the legal principles and objectives of taxation and in so doing arrived at a wrong decision.
 - f. That the learned Taxing Master erred and misdirected himself in law by allowing item 1 in the Bill of Costs. The said sum was manifestly excessive and without any legal basis.
 - g. That the learned Taxing Master erred in law in allowing items 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Bill of Costs.
 - h. That the learned Taxing Master erred and misdirected himself both in law and in fact in respect of items 5,6,7,8,9,10,11,12, and 13 by allowing sums which were manifestly excessive, luxurious and/or unusual expenses.
 - i. That the learned Taxing Master erred in law in allowing items 8, 9, 10 and 11 without any evidence to ascertain the exorbitant ‘journey from home’ amounts relied upon by the respondent.
 - j. That the learned Taxing Master is required to only allow such costs, charges and expenses that are necessary for the attainment of justice or for defending the rights of any party and not to enrich the respondent.
 - k. That the learned Taxing master erred I fact and in law by failing to give due regard to the submissions by the applicants in response to the bill of costs.
 - l. It is in the interest of justice that the orders sought herein be granted as prayed.
3. The respondent opposed the application on the following grounds:
- a. That the application is made in bad faith and meant to delay the enjoyment of the fruits of the decision of the court.
 - b. That there is no basis for the grant of the said orders.
4. The procedure for challenging the decision of the taxing master is provided for under the [Advocates \(Remuneration\) Order](#) Rule 11 as follows:
- “(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."

5. The impugned ruling was delivered on June 29, 2022. The applicant wrote to be supplied with the reasons for the ruling on July 12, 2022. This was within the prescribed fourteen days. The letter was too general and did not give an indication which items were disputed. The court of Appeal in the case of *Machira & Co Advocates v Arthur K Magugu & another* [2012] eKLR delivered itself as follows:

"13. As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeals or reviews was expedition. If vague notices are given taxing officers might be forced to give their reasons for their taxation of each item including even those not objected to. That would of course defeat the purpose of that expeditious procedure. Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of August 1, 2001 was fatally defective. It follows that the Respondents reference based on it was incompetent and we agree with counsel for the Appellant that it should have been struck out."

6. In the instant reference, the application will suffer the same fate. The same is struck out with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 27TH DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE.

