



**Kazungu v Tindika t/a Tindika & Company Advocates (Environment and Land Miscellaneous Application E004 of 2025) [2025] KEELC 4311 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4311 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2025**  
**FM NJOROGE, J**  
**JUNE 5, 2025**

**BETWEEN**

**MIKE KAINGU KAZUNGU ..... APPLICANT**

**AND**

**RANDOLPH M TINDIKA T/A TINDIKA & COMPANY  
ADVOCATES ..... RESPONDENT**

**RULING**

1. This ruling is in respect to a Notice of Preliminary Objection dated 27/3/2025. The objection which was filed by the Respondent, is premised on the following grounds: -
  1. That the Chamber Summons Application offends the mandatory provisions of paragraph 11 (1) and 2 of the *Advocates Remuneration Order* and effectively the same cannot stand;
  2. That the taxation of the Advocate/Client Bill of Costs was taxed in ELCLC Miscellaneous Civil Application No. E047 of 2024 and thus any reference against the Taxation of the said Bill of Costs must have been filed in the same Cause where Taxation was done and not in a different Cause as purported herein;
  3. That said application is bad in law, incompetent, grossly lacking in merits and otherwise an abuse of the due process of the court;
  4. That the Application herein is merely calculated to frustrate the respondent in recovering the Taxed Costs;
  5. That the application herein cannot stand and ought to be dismissed with costs to the Respondent.
2. The background to the present reference is that in the application dated 12th November 2024 the taxing master delivered a ruling in respect of a bill of costs dated 12<sup>th</sup> November 2024 on 13th February



2025 whereby the respondents bill of costs was taxed at Kenya Shillings 4,830,533.60. The following prayers are sought in the reference

- a. .... Spent
  - b. That this court be pleased to stay the execution and any consequential orders of the ruling delivered by the taxing master in Malindi ELC miscellaneous civil application number e47 of 2024 on 13th of February 2024 pending the hearing and determination of this reference;
  - c. That this court be pleased to set aside the taxing masters decision and ruling in malindi ELC miscellaneous C4 application number e47 of 2016 delivered on 13th February 2024 and the matter be taxed afresh by this honorable Court;
  - d. That the costs of this application be provided for.
3. The grounds upon which the reference is brought are stated at the foot thereof and reiterated in the supporting affidavit, but this court will not delve into them for now due to the need to look into the merits of preliminary objection that has been raised by the respondent.
4. Ground 1 of the objection is to the effect that the application offends the mandatory provisions of paragraph 11 (1) and (2) of the Advocates Remuneration Order. Paragraph 11 (1) and (2) provides 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.”
5. The respondent filed submissions dated 31<sup>st</sup> March 2025. On the first ground, it was submitted as follows: that rule 11 of the Advocates Remuneration Order provides the procedure of framework for a party who wishes to challenge a taxation decision made by the taxing officer; the provisions are designed to ensure that any disputes regarding taxing of costs are resolved in an order and timely manner; that paragraph 11 creates a strict requirement for a party who wishes to object to taxing master’s decision by way of reference and that the key elements of compliance are as follows: Notice in writing Specification of items of objection Clear timelines.
6. It is submitted that the applicant did not adhere to any of these requirements hence the objection to the taxation as purported hearing is procedurally defective and must be dismissed.
7. It is also urged that compliance with paragraph 11 is not a mere technicality but a procedural step that serves to uphold the integrity and orderly administration of justice. Counsel submit that the practical underpinnings of that paragraph are follows:
8. One, that any party dissatisfied with taxation is given an opportunity to raise the objectives in a structured and fair manner; that the notice to the taxing master ensures that she is aware of the specific items being contested and has an opportunity to provide clarity or make corrections where necessary.



9. Two, that taxation decisions are intended to be final and binding unless properly challenged through the process outlined in that paragraph. Bypassing the mandatory requirements undermines the finality and certainty of taxation decisions thus leading to indefinite disputes over taxation of costs.
10. It is also stated that the process prescribed under paragraph 11 of the *Order* is meant to promote the orderly resolution of disputes over taxation of costs paragraph 11 in that the applicant did not give the requisite notice in writing to the taxing officer within 14 days from 13<sup>th</sup> February 2025 on the items he objects to, but he proceeded to file the application herein. Consequently, there are no reasons given by the taxing master to the applicant which would only have been supplied had the applicant complied with the provisions under consideration. The filing of the reference without compliance is thus said to be irregular and premature and this court lacks jurisdiction to entertain it.

In respect of the present application it is submitted that there was no compliance with the mandatory requirements of

11. The case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR is cited in that regard where a notice of objection had not been issued and the Court of Appeal held that the procedure under paragraph 11 is mandatory and must be strictly adhered to; that in the same case the Court Of Appeal also stated that the notice of objection is a jurisdictional prerequisite for the filing a reference. The additional case of *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] KECA 245 (KLR) was also cited in that regard.
12. The applicant filed submissions dated 8<sup>th</sup> April 2025. In response to the objection under paragraph 11 (1) and (2) it was stated as follows: that the application has not offended that rule; that the first step of issuing a notice stipulated under that rule was erroneously omitted due to an honest oversight by an advocate who was handling the matter at the time and the omission was not intentional or in disregard of the law but rather a genuine lapse in the procedural flow; rule 11 of the Advocates Remuneration Order, the reference was nonetheless brought before this honorable Court within the timelines prescribed by the said rule; it is submitted that the ruling by the taxing master was delivered on 14<sup>th</sup> February 2025 and the reference was lodged on 17<sup>th</sup> February 2025 which was well within the 14-days provided for by law, and that fact demonstrates the applicant's intention to comply with the spirit and purpose of the rule.

The applicant further submitted that notwithstanding the omission of the initial step under

13. It is further submitted that a mistake of counsel should not be visited upon an innocent litigant who is ignorant of the procedures and the case of *Shah H Bharmal and Brothers v Kumari* [1961] EA 679 and *Belinda Murai and Others v Amos Wainaina* 1978 KLR have been cited to support that position.
14. *Mwangi V Mwangi* 1999 2 EA 234 was cited in support of the submission that the rule regarding notice should not be strictly applied in this case. Further, counsel submitted that the applicant should not be locked out of the seat of justice by mere absence of reasons for taxation by the taxing officer. He submitted that the law in any event anticipates such scenario and provides remedy for the same; he referred to Rule 11 Sub rule 4 of the *Advocate Remuneration Order*, and stated that it provides for the remedy of extension of time to enable a party to comply where there has been such a lapse.
15. The case of *Raila Odinga & Five Others Versus Independent Electoral and Boundaries Commission & Three Others* Petition No 5 Of 2013 2013 eKLR and *Zakaria Okoth Obado Versus Edward Akongo Ayugi & 2 Others* 2014 eKLR were also cited for the proposition that Article 159 of the *constitution* was meant to ensure that procedure and form do not trample upon substantive justice.



16. The applicant also addressed the issue as to whether the reference can be filed in a different application or cause other than the one in which the taxation decision was made.
17. Counsel submitted that the filing of the present reference under different cause number from the original matter was merely an inadvertent oversight on the part of counsel who was handling the matter at that time, and that the procedural misstep does not in any way go to the root of the matter or prejudice the opposing party. Similarly, *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] KECA 245 (KLR) and Article 159 of the *constitution* were relied on for that submission.
18. It was further submitted that the amount awarded by the taxing master is exorbitant and that it will be a grave injustice for a litigant to go unheard merely due to an inadvertent mistake on the part of his advocate, considering the substantial financial implications involved. Article 50(1) was cited as guaranteeing every person the right to a fair hearing. In the eyes of counsel, upholding the objection, amounts to a denial of justice. Counsel requested the court to apply its wide discretionary powers under the *Civil Procedure Act* and Rules as stipulated in Section 1A,1B, 3A and Section 79G regarding the overriding objective and the inherent jurisdiction of the court to safeguard the interests of justice.

### **Analysis and Determination.**

19. It is admitted by the applicant that the requisite notice provided for by paragraph 11 of the Advocates Remuneration Order was not issued. The applicant gives several reasons which are apparent in the analysis herein above and seeks the court to overlook that omission and proceed to entertain the reference filed against the taxing master’s bill of costs. Principal among the reasons given are that the omission was an inadvertent lapse on the part of the erstwhile counsel for the applicant; that the filing of the reference within 14 days as envisaged by the rule is in any event evidence that ab initio the applicant desired to comply with the spirit of the rule; that the omission does not go to the root of the of the matter or in any manner prejudice the respondent.
20. On the other hand, the respondent is of the view that the rule is meant to create order in the resolution of disputes regarding taxation of bills of costs and ensure a finality and certainty of taxation decisions, and that failure to comply with the rule undermines such finality and certainty.
21. The Court of Appeal in *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] KECA 245 (KLR) held thus:
 

“With regard to advocates’ bills of costs, we agree with the decision of Ringera J (as he then was) in *Machira vs Magugu* that the Advocates Remuneration Order is a complete code which does not provide for appeals from taxing master’s decisions. Rule 11 thereof provides for ventilation of grievances from such decision through references to a judge in chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used. Appeals require the typing of proceedings, compiling records of appeal and hearing of the same in open court. Reviews, however, would require provisions akin to those in Section 80 of the *Civil Procedure Act* of discovery of new and important matters, errors on the face of the record and so on. In our view the Rules Committee intended to avoid all that and provide for a simple and expeditious mode of dealing with decisions on advocates’ bills of costs through references under Rule 11 to a judge in Chambers.” (emphasis mine.)
22. This court is of the view that compliance with rules of procedure is important. Rules are made to be followed in order to attain a certain purpose. This court is persuaded that Rule 11 of the *Advocates Remuneration Order* was enacted to enable a smooth processing of disputes over taxing masters’



decisions by first, ensuring that the taxing master is made aware of the challenge to the decision by way of a notice and secondly, to enable her give reasons of her decision. This court finds those to be the major reasons for the enactment of that rule. The main reason among the two is that the taxing master is enabled to give reasons for her ruling on the taxation. Those reasons, once provided, are meant to enable in turn the applicant to lodge a reference.

23. In *Machira & Co. Advocates* (*supra*) the Court of Appeal held as follows:

“ 12. Sub-rule (1) requires the party objecting to give notice in writing within 14 days “of the items of taxation to which he objects.” As the trial judge correctly found, the Respondents notice of 1<sup>st</sup> August 2001 did not comply with that provision. It did not specify the items objected to so that the taxing officer could give his reasons on them.

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 1<sup>st</sup> August 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.”

24. In some cases, where the notice is issued to the taxing Master there have arisen delays in receiving the reasons which in turn occasion delay in filing the reference. The present case however presents a very delicate situation where though the notice required under rule 11(1) was not issued, a reference was nonetheless filed by the applicant challenging the taxation. The question that arises is whether an applicant may file a reference without necessarily first requesting for or obtaining the reasons as in the present case.

25. It is clear that taxation of a bill of costs is conducted on the basis of certain principles. The question that arises is whether counsel who have identified violation of such principles even before being furnished with the taxing master’s reasons have to await the response of the taxing master giving reasons for her decision. Often the reasons for the taxing master’s decisions are contained in the rulings delivered in taxation, such that it is superfluous to seek or await to be furnished with reasons by the taxing master.

26. *Evans Thiga Gaturu Vs Kenya Commercial Bank Ltd* [2012] eKLR held as follows:

“In my own view, where no reasons appear on the face of the decision of the taxing master, it is only prudent that such reasons be furnished in order for the Judge to make an informed decision as to whether or not the discretion of the taxing master was exercised on sound legal principles. However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons.”

27. *Abmed Nassir Abdikadir & Co Advocates v National Bank of Kenya Ltd* [2006] 1EA 5 also held that where there are reasons in the ruling there is no need to seek reasons from the taxing master; delivering itself as follows:

“ Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the



said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling...”

28. In *B. H. LALJI vs B. H. Nurani & Others* [1998] eKLR there was an issue as to whether the taxing Master had forwarded the objector his reasons, and the court in order to settle the issue stated as follows in its order at the preliminary stage of the matter:
- “The Ruling read out by the taxing Master dated 8.11.96 does contain his reasons as required by the Advocates Remuneration Order. The taxing Master is therefore not required to give any other reasons in this matter. That being so, the plaintiff is now at liberty to file a substantive application as required by Rule 11(2) of the said order. The application to be filed and served straight away. Mention on 6.6.97 for further orders”.
29. In my view, though the framing of Rule 11(1) suggests that it is meant to be applied strictly where there appears to be no reasons given by the taxing master, it would be unnecessary to lodge such notice, though provided for, where reasons have been issued in the ruling or where though reasons have not been given, there is a clear breach of the principles of taxation.
30. The main issue that should necessarily arise to aid the court in deciding an objection based on want of notice is whether the court can figure out from the application the exact items in the Bill of costs which are being challenged in the reference. For this the court does not have to seek and validate a systematic listing of those items and it may peruse the application generally.
31. Having regard to the contents of the present application the prayers do not specify the items but ground nos (b) and (d) set out at the foot of the application identifies the instruction fee as an item that aggrieved the applicant. Thus the only item of the bill of costs in dispute is the instructions fees. It matters not that it appears to be the sole item that appears to have aggrieved the applicant; even just one item can be the basis for a taxation reference.
32. In view of the foregoing this court finds that an excessively strict interpretation of Rule 11(1) of the *advocates remuneration order* may throttle the very spirit of that rule identified by the Court of Appeal in *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] KECA 245 (KLR)
33. For the above reasons I find valid the applicant’s argument that he demonstrated an intention to impugn the ruling of the taxing master by filing the reference even without having lodged any notice under Rule 11(1). The ground in the preliminary objection premised on non-issuance of notice must therefore fail.
34. Regarding whether the reference can be lodged by way of another fresh proceeding other than that in which the taxation decision was made, the applicant cites error on the part of counsel and, citing *Shah H. Bharmal and Brothers v Kumari* [1961] EA 679 and *Belinda Murai and Others v Amos Wainaina* 1978 KLR pleads with this court not to punish the applicant for the mistakes of counsel. Counsel for the applicant submitted that it will be a grave injustice for the applicant to go unheard merely due to an inadvertent mistake on the part of his erstwhile advocate, considering the substantial financial implications involved, and that Article 159 discourages sacrificing justice on the altar of technicalities and that Article 50(1) guarantees every person the right to a fair hearing.



35. It is not disputed that the decision on taxation was made by the taxing master in ELCLC MISC Civil Application No E047 of 2024 and not the present file in which the reference has been lodged.
36. In the case of *Monyo & 2 others v Ngige* (Miscellaneous Civil Application E07 of 2020) [2023] KEHC 817 (KLR) (10 February 2023) (Ruling) the court held as follows:

“23. For purposes of taxation of party and party costs, that must be conducted in the suit in which costs were awarded, the act must be construed to vest the jurisdiction upon the judge of the Environment and Land Court to hear reference and even entertain application for extension of time so that the court take full charge of all disputes before it and the related and incidental disputes emanating and flowing therefrom. Like in this matter, there is a prayer for stay of the certificate of taxation. That certificate was issued in the Environment and Land Court file. To issue an order of stay in this matter would not only affront section 34 of the *Civil Procedure Act* but equally go against the dictates of article 162 (5) of the *constitution* and paint the court as being bent on usurping the jurisdiction of that other court. On the basis that the taxation sought to be challenged was conducted and concluded in the Environment and Land Court file, the court determines that it has no jurisdiction to entertain the matter.

24. For avoidance of doubt, this court lacks jurisdiction on disputes as costs between parties litigating before the Environment and Land Court. If, however the dispute was to be between counsel and client, wherever the service was offered and applied, the words of the *Advocates Act*, would have to be applied and construed to vest exclusive jurisdiction in the High Court and not the courts of equal status. The application thus fails and is struck out for want of jurisdiction.”

37. This court would only add to the above opinion by indicating that the mandate of courts of equal status includes handling advocate/client bills of costs and references as in the present case. Though under the *Advocates Act*, defines the court as the High Court, with the promulgation of the *constitution* of Kenya 2010, and in view of Section 7 of the 6th Schedule, the definition of the court under the *Advocates Act* must be construed with adaptations, alterations, qualifications and exceptions necessary to bring into conformity with the *constitution* to include courts of equal status. However, the persuasive point here however is that if party of party bills of costs need be taxed within the suit record in which the costs were awarded, must be for the reason that such a bill mostly concerns all the parties. However, in respect of an advocate bill of costs, it is plain that an advocate-client relationship is contractual, and this court is of the view that the same may be filed by way of a miscellaneous application since it is a matter purely concerning the contract for services between an advocate and his client. The same case should therefore apply to a reference. I have perused the respondent’s submissions and I have not found any authority cited stating otherwise. This court also sees no prejudice that would be occasioned to the respondent by the filing of reference by way of a miscellaneous application. Paragraph 13 of the *Advocates Remuneration Order* appears to recognize the above rationale when it provides for taxation of costs between an advocate and a client as follows:

“(3) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof.”



38. I do not find any substance or merit in grounds no 3, 4 and 5 when they are construed independent of any other ground in the notice of preliminary objection. The main grounds were grounds 1 and 2 and from the analysis herein above, those grounds do not have any merit.
39. The upshot of the foregoing is that all the preliminary objection by the respondent must fail and it is hereby dismissed with costs. This matter shall be mentioned on 19/6/2025 alongside ELC MISC Application No E047 of 2024 for further directions.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

