



**H. Young & Company Limited v Lagoon Investments Limited (Civil Suit 236 of 2019)  
[2025] KEHC 4603 (KLR) (Commercial and Tax) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4603 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 236 OF 2019  
BK NJOROGE, J  
APRIL 10, 2025**

**BETWEEN**

**H. YOUNG & COMPANY LIMITED ..... PLAINTIFF**

**AND**

**LAGOON INVESTMENTS LIMITED ..... DEFENDANT**

**RULING**

1. This is a Ruling in respect of the application by the Plaintiff/Applicant. It is under a Certificate of Urgency by way of a Chamber Summons dated 17<sup>th</sup> October, 2024. It is supported by the Affidavit of Lilian Omwenga sworn on 17<sup>th</sup> October, 2024 with an annexure.
2. The Application is in the nature of a reference from a decision of a Taxing Master/Deputy Registrar of this Court. It seeks the following reliefs;
  - a. Spent
  - b. Spent
  - c. This Honourable Court be pleased to set aside, in its entirety, the Taxing Officer's ruling on the defendant's bill of costs dated 11<sup>th</sup> January, 2023 and 22<sup>nd</sup> May, 2023 as delivered on 20<sup>th</sup> September, 2024.
  - d. This Honourable Court be pleased to strike out the defendant's bill of costs dated the 11<sup>th</sup> January, 2021 and 22<sup>nd</sup> May, 2023.
  - e. In the alternative and without prejudice to paragraph (d) above, the Honourable Court be pleased to direct the respondent to regularize its bill of costs by withdrawing the previous bill of costs and filing a fresh one for taxation by a different taxing officer.



- f. Costs of this application be provided for.
3. The Application is opposed by the Defendant/Respondent who has filed a Replying Affidavit sworn by Eunice Lumallas on 15<sup>th</sup> November, 2024.
4. Pursuant to the directions issued by this Court, the Application was disposed of by way written submissions. The Court has seen and read the Plaintiff's submissions dated 8<sup>th</sup> November, 2024.
5. The Court has also seen and read the Defendant's written submissions dated 15<sup>th</sup> November, 2024.

### **Issues for Determination**

6. Having read the Application, the response and the submissions filed herein, the Court frames the following issues for determination;
  - a. Whether the reference was filed within the stipulated timelines.
  - b. Whether the reference is meritorious.

### **Analysis**

7. In the case of *Joreth Limited -vs- Kigano & Associates* [2002] KECA 153 (KLR), the Court of Appeal distinguished that a reference is not an appeal in the true sense of the word. It stated as follows;

“But what was before the learned Judge was not an appeal in its appellate jurisdiction. It was what could only be termed as a reference to a High Court Judge from the decision of the Taxing Officer. Rule 11(1) of The Advocates (Remuneration) Order made under The *Advocates Act*, Cap. 16, Laws of Kenya makes the following provision:

- “ 11. Should any party object to the decision of the taxing officer, he may
  - (1) 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.”

A High Court judge when hearing such an objection is not sitting in his capacity as a judge exercising his appellate jurisdiction as, say, would be the case when he hears an appeal against the decision of a magistrate. The taxing officer whilst taxing a bill of costs is carrying out his functions as such only. He is an officer of the superior court appointed to Tax bills of costs.”

8. In *Obora & 73 others v Rift Valley Railways* (Civil Appeal 448 of 2019) [2025] KECA 581 (KLR) (28 March 2025) (Judgment the Court of Appeal has also rendered itself as follows on this issue; -

“It should be remembered that taxation of costs applies to matters filed in the High Court and Courts of equal status. The process of taxation of a party and party bill of costs is undertaken in the same file in which the costs were ordered to be paid. Accordingly, the process of taxation is not a fresh suit That is the reason objections from decisions of the taxing officers are by way of a chamber summons instead of an appeal. Therefore, it would be a misnomer to argue that the objection to the taxation is a first appeal. This comes out



clearly from paragraph 11 above where it is expressly stated that a challenge to taxation is by way of an objection while a challenge to this Court from the decision arising from the objection is an appeal.”

9. The Plaintiff/Applicant is aggrieved by the decision of the Taxing Master Honourable Stephanie Bett (Deputy Registrar). In her decision delivered on the 20<sup>th</sup> September, 2024, she made the following orders;
  - a. Partially sustained the Notice of Preliminary Objection dated 6<sup>th</sup> July, 2023. The Bill of Costs dated 22<sup>nd</sup> May, 2023 was struck off. The Court then proceeded to tax the remaining Bill of Costs dated 11<sup>th</sup> January, 2023.
  - b. The Bill of Costs dated 11<sup>th</sup> January, 2023 was taxed at Ksh.1,267,325.00.
10. A brief history into the dispute is that the Defendant was awarded costs by the Ruling of Honourable Justice A. Mabeya delivered on 25<sup>th</sup> February, 2022.
11. The Defendant filed a Bill of Costs dated 11<sup>th</sup> January, 2023, seeking costs of Kshs.418,353,454.80. It thereafter went ahead to file an Amended Bill of Costs amended on 22<sup>nd</sup> May, 2023. It sought for costs of Ksh.6,286,790.15, hence scaling down its claim for fees.
12. The Plaintiff objected to the Amended Bill of Costs amended on 22<sup>nd</sup> May, 2023. It also objected to the presence of two bill of costs in the same file. It relied on Rule 71 of the Advocates (Remuneration) Order which states as follows;
  71. Bills not to be altered after being lodged  

No addition or alteration shall be made in a bill of costs by the party submitting the same after the bill has been lodged for taxation, except by consent of the parties, or by permission or direction of the Court or taxing officer.
13. It is also submitted that the Taxing Master gave directions that the Notice of Preliminary Objection be heard first. That parties were directed to file written submissions to the Notice of Preliminary Objection. It was therefore anticipated that the Ruling on this Preliminary Objection, would set the trajectory on whether the Bill of Costs would be listed for taxation thereafter. That contrary to all norms and expectations, the Taxing Master proceeded to determine both the Notice of Preliminary Objection as well as tax the Bill of Costs. That the Plaintiff was prejudiced since it was not accorded an opportunity to file submissions. That it was condemned unheard.
14. The Defendant submits to the contrary. That the Bill of Costs was taxed procedurally. That the Taxing Master gave clear directions as to filing of written submissions to both the Notice of Preliminary Objection as well as the Bill of Costs. Lastly, it also submits that there is no proper reference filed before this Court. That the Chamber Summons was filed outside the statutory timelines.
15. Having captured in brief the arguments set forth in the pleadings and submissions, the Court proceeds to analyze the issues framed.

**a. Whether the Reference was Filed within the Stipulated Timelines.**

16. A reference to this Court from a decision of a Taxing Master is pursuant to paragraph 11 of the Advocates (Remuneration) Order. It states as 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.
  - (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.
17. The decision of the Taxing Master was rendered on 20<sup>th</sup> September, 2024. The fourteen (14) days lapsed on 4<sup>th</sup> October, 2024. The reference was filed on 27<sup>th</sup> October, 2024. This is outside the statutory time limit of fourteen days set out by paragraph 11 of the Advocates (Remuneration) Order.
  18. The Defendant seeks that the Court proceeds to dismiss the application, as having been filed out of time. It cited the decisions in *Twiga Motor Limited -vs- Hon. Dalmas Otieno Onyango* [2015] eKLR and *Governor's Ballon Safaris Limited -vs- Skyship Company Limited & Another* [2015] eKLR.
  19. The Plaintiff has not tackled this issue in its submissions. Perhaps due to the fact that it had filled its submissions prior to the Defendant's response. In any event no leave was sought to file Supplementary Submissions.
  20. The question to be answered by this Court is whether the Application is a reference and it was filed out of time. If the answer to both queries is yes, then what is the fate of the application?
  21. The Court is of the considered opinion that what is before it is a reference. It was filed pursuant to paragraph 11 (1) and (2) of the Advocates (Remuneration) Order. It challenges the decision of a Taxing Officer. It was filed outside the fourteen (14) days period.
  22. The Court is guided by the following decisions; *Endesia v Odhiambo & another* (Environment & Land Case 66 of 2013) [2024] KEELC 3433 (KLR) (30 April 2024) (Ruling)

“For all intents and purposes, the objection to the ruling dated 21st October 2022 was lodged outside the 14-day time frame established under Paragraph 11 (1) and (2) of the Advocates (Remuneration) Order. Moreover, no sufficient reason has been provided as to why no objection was lodged the ruling of the Taxing Master within the established time frame.

The upshot of the foregoing is that the Preliminary Objection dated 28th November 2022 is meritorious and the same is allowed with costs.”



23. In *Machira & Co. Advocates v Arthur K. Magugu & another* [2012] KECA 245 (KLR) the Court of Appeal restated the time frame set out by paragraph 11 of the Advocates (Remuneration) Order. It went further to state as follows; -

“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 1st 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.

14. Having not given a proper notice specifying the items objected to and seeking the reasons for their taxation at the figures they were taxed, the issue of when the taxing master’s decision was received is immaterial and does not avail the Respondents. Under sub-rule (2), time stops running from the date a proper notice is filed, which of course must be within 14 days of taxation, until receipt of the taxing master’s reasons for his decision.”

24. The Court has reached the decision that the application before the Court is incompetent. No leave was sought to file it out of time. The Defendant did not move the Court to seek to extend time for filing such an application, seeing that time had lapsed.

#### **b. whether the Reference is Meritorious**

25. The Court has looked at the record of proceedings on 20<sup>th</sup> November, 2021. There was Ms. Lenkidi holding brief for Lumallas for the Applicant. There was a Mr. Kimathi holding brief for Agwara for the Plaintiff. Hon. S. Bett gave the following directions;

“Parties to comply with directions issued on 4<sup>th</sup> October, 2023. The preliminary objection and bill of costs to be dealt with concurrently. Parties to exchange pleadings and submissions 21 days. Mention on 6<sup>th</sup> February, 2024.”

26. A reading of the proceedings of 6<sup>th</sup> February, 2023 and 27<sup>th</sup> February, 2023 shows that the Defendant at all times made it clear that it was submitting on the Notice of Preliminary Objection as well as Bill of Costs itself.

27. The Court is not persuaded that the Plaintiff was caught by surprise by the turn of events. That the decision rendered on the Bill of Costs was unexpected.

28. In any event the Taxing Master correctly applied the law and held that the Amended Bill of Costs amended on 22<sup>nd</sup> May, 2023 was filed without leave. It was struck out. What remained was the original Bill of Costs dated 11<sup>th</sup> January, 2023. That remaining Bill of Costs was properly taxed by the Taxing Master. There may have been no submissions by the Plaintiff but the Taxing Master did exercise her discretion. The Court finds no fault in the manner in which the Taxing Master proceeded.

29. Having found that the reference was filed out of time, nevertheless the Court finds that in any event the reasons advanced in the reference are not meritorious.

30. The application is dismissed with costs to the Defendant/Respondent.



**Determination**

31. The Chamber Summons dated 17<sup>th</sup> October, 2024 is dismissed in its entirety.
32. Costs thereof are awarded to the Defendant/Respondent.
33. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF APRIL, 2025**

**NJOROGE BENJAMIN K**

**JUDGE**

In the presence of;

N/A for Mr. Agwara for the Plaintiff

Mrs. Omondi holding brief for Mrs Lumallas for the Defendant

Mr. Luyai – Court Assistant

