



REPUBLIC OF KENYA



Otieno v Co-operative Bank of Kenya Limited (Miscellaneous Civil Case E119 of 2024) [2025] KEHC 4963 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CIVIL CASE E119 OF 2024
WM MUSYOKA, J
APRIL 25, 2025**

BETWEEN

NICODEMUS ONYANGO OTIENO APPLICANT

AND

CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

RULING

1. What I am tasked with determining is a summons dated 14th November 2024, which challenges taxation of a bill of costs, dated 11th May 2024, vide a ruling that Hon. EA Nyaloti, Chief Magistrate, delivered on 5th November 2024, in Busia CMCCC No. E200 of 2023. The application seeks stay of execution for the taxed costs, the setting aside of the taxation orders and the setting aside of the certificate of taxed costs. Detailed grounds, upon which the summons is premised are set out on the face of the application and in the supporting affidavit, sworn by Nicodemus Onyango Otieno, the applicant herein.
2. The response to the summons is by an affidavit by Lucy Muthama, a legal officer of the respondent, sworn on 5th December 2024, principally arguing that a decision of a taxing officer can only be challenged by way of a reference to the Judge.
3. Taxation of bills of costs, as between parties, is governed by the Advocates (Remuneration) Order, according to paragraph 2 thereof. The Order sets out the schedules of costs to be charged, and the processes of taxation. It also provides for challenges to decisions, by taxing officers on the taxation.
4. Rule 11 of the Advocates (Remuneration) Order sets out the framework for filing challenges to a taxation by a taxing officer. The Rule provides as follows:

“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."

5. The framework details the steps to be taken. It starts with paragraph 11(1), by the party aggrieved, writing to the taxing officer, after the decision on taxation is rendered, giving notice of the items in the taxation that it objects to. Paragraph 11(2) then follows. Upon the taxing officer receiving the objection, he or she should record the reasons for the decision on the items objected to and forward the record of the reasons to the objecting party. Should the objector not be satisfied with the reasons given, there is liberty, within 14 days, to apply to the Judge, by way of what is popularly known as reference, for review or setting aside or whatever, of the decision of the taxing officer on the items objected to. Paragraph 11(3) kicks in where the Judge renders a decision on the reference, which aggrieves any of the



parties, such an aggrieved party has a right of appeal, under paragraph 11(3) to the Court of Appeal, with leave of the Judge. Paragraph 11(4) empowers the High Court to expand the timelines set in paragraph 11(1)(2).

6. Litigation under paragraph 11 is progressive. It goes step by step. It starts with the step under paragraph 11(1), followed by paragraph 11(2), and then paragraph 11(3). Consequently, there can be no reference to the Judge of the High Court without the reasons given by the taxing officer, and the taxing officer cannot give reasons unless prompted under paragraph 11(1). It is the objection to the taxing officer which triggers the reference, much the same way that the decision of the Judge on the reference triggers the appeal to the Court of Appeal. A reference cannot be mounted under paragraph 11(2), by jumping the step in paragraph 11(1).
7. I have seen the decisions in *Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited* [2017] eKLR (Meoli, J) and *David Anunda v John Karu* (sued on his own capacity and as Chairman of Kileleshwa Githunguri Road Residents Association) & 2 others [2021] KEELC 1785 (KLR) (Ogutu-Mboya, J). I agree with them. The notice of objection, envisaged under paragraph 11(1)(2), is the foundation for the reference to the judge, and without it there can be no reference.
8. The jurisdiction granted to me, under paragraph 11, is to entertain a reference from the decision from the taxing officer, filed following the process that I have detailed above. What is before me is not a proper reference, as the processes, set out in paragraph 11, have not been followed. Parties often cite Article 159 of *the Constitution* to override such processes, but paragraph 11 is also about jurisdiction, meaning that those processes are more than technicalities of procedure. Paragraph 11(2) gives the Judge jurisdiction to deal with a challenge to a decision of the taxing officer.
9. My colleagues have come to similar conclusions, in *George Kithi t/a Kithii & Co Advocates v Carneval Village Apartments & another* [2023] KEELC 18358 (KLR) (Ogutu-Mboya, J), *Sharpley Barret & Company Advocates v Bamburi Special Products Limited* [2024] KEHC 11590 (KLR) (N. Mwangi, J) and *Midenga & Company Advocates v Mutua* [2024] KEHC 8947 (KLR) (N. Mwangi, J). I agree that the notice of objection to taxation would be equivalent to the memorandum of appeal in civil appeals.
10. I can only assume that jurisdiction upon the processes in paragraph 11(1) being complied with. Paragraph 11(1) has not been complied with, in this case, so the jurisdiction to review the decision of the taxing officer, dated 5th November 2024, has not yet accrued, and I, therefore, have no jurisdiction to entertain any challenge to that decision. I have no proof that the applicant wrote to the taxing officer, by way of notice of objection to taxation, to ask for reasons for taxation of specific items.
11. I have perused, or gone through, the ruling delivered on 5th November 2024. It was incredibly short. No reasons were assigned for the amount that the court taxed, hence it would have been critical for the taxing officer to give reasons for her decision, to provide a basis for the applicant to mount a proper reference, and for the judge to properly interrogate the taxation proceedings, to ascertain whether the taxing officer handled the matter properly or not. Without those reasons, the judge would be handicapped.
12. For avoidance of doubt, the taxing officer rendered herself as follows:
 - “ 1. Before this Court is the Defendant’s bill of costs dated the 11th April 2024. The Bill of costs is opposed by the Plaintiff.
 2. The Plaintiff proposed that the bill be taxed at ksh. 33,000 while the Defendant proposed that the bill be taxed at KSH. 167,000.



3. I have considered the submissions and the proposed amounts. The Plaintiff's case against the Defendant was withdrawn. From the court records, the case was mentioned nine times.
 4. The Defendants bill of costs is taxed at ksh. 120,000.
 5. The Defendant is also awarded interest at court rates from the date of the Ruling.”
13. In addition, the applicant could not have been opposed to everything. He should have, in the objection that he should have raised to the taxing officer, pinpointed the items that he was opposed to, so that the taxing officer could focus on those, which would then form the basis for the reference.
 14. The summons, dated November 14, 2024, is not properly before me, for the reasons given. It is for striking out, and I hereby strike it out, with costs.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 25TH DAY OF APRIL 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Wycliffe Okutta, instructed by Ouma-Okutta & Associates, Advocates for the applicant.

Ms. Anne Matara, instructed by Aluvale & Company, Advocates for the respondent.

