



**Chaudhri & Associates v Lady Lori (K) Limited (Miscellaneous Application E536 of 2022) [2025] KEHC 6573 (KLR) (Civ) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6573 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION E536 OF 2022**

**RC RUTTO, J**

**MAY 16, 2025**

**BETWEEN**

**CHAUDHRI & ASSOCIATES ..... APPLICANT**

**AND**

**LADY LORI (K) LIMITED ..... RESPONDENT**

**RULING**

1. There two applications before me for determination. In determining the applications, I will refer to the parties as cited in the cause above regardless of who filed which application. The first application is a reference, by way of a Chamber Summons Application dated 10<sup>th</sup> January 2024 filed by the Respondent. It seeks the following reliefs:
  1. THAT the Honourable Court be pleased to set aside the Taxing Master’s determination made on 19/09/2023 finding that there was any fees balance as at the time of filing the advocate/client bill of costs;
  2. THAT the Honourable Court be pleased to set aside the Taxing Master’s determination made on 19/09/2023 on item number 1 and 2 of the advocate/client bill of costs;
  3. THAT the Honourable Court be pleased to set aside the Taxing Master’s determination made on 19/09/2023 on item number 2 to 41 the advocate/client bill of costs;
  4. THAT the Honourable Court be pleased to grant leave to file the reference out of time;
  5. THAT the costs of this reference be awarded to the objector.
2. The application is supported by the replying affidavit sworn on 10<sup>th</sup> January 2024 by Moses Tumu, advocate instructed to represent the Respondent and, on the grounds, set out on the face of it. The



Respondent contend that it was dissatisfied with the taxing master's decision dated 19<sup>th</sup> September 2023 and proceeded to file its notice of objection dated 25<sup>th</sup> September 2023, six days later. It also requested for reasons for the decision from the taxing master. He asserts that the reasons were not advanced in good time hence the delay in filing the reference.

3. The Respondent has urged this Court to allow the application for the following reasons: the Respondent did not owe the Applicant any legal fees as at the time of filing the bill of costs; the bill of costs was time barred; the taxing master erroneously applied the Advocates Remuneration Order of 2014 and not that of 2009; the findings on items No. 2 – 41 were without any basis because a ruling on the amendments to the bill had not been delivered; the Applicant did not serve it with all the requisite pleadings; the amount awarded did not take into account the fact that the Applicant had received some payments; the taxing master applied the wrong principles and relied on extraneous issues in awarding the bill; and the delay in filing the bill of costs was on account of the fact that the taxing master failed to supply the reasons for the taxation in good time but the notice of objection was filed within the allowed timelines.
4. The application is vehemently opposed through a replying affidavit sworn on 3<sup>rd</sup> November 2024, by Mohamed Ferhan Chaudhri, a partner in the Applicant's firm. They urged this Court to dismiss the Reference with costs on account of the following reasons, that: the Chamber Summons was only served upon it on 28<sup>th</sup> August 2024, and in any event, the Reference was time barred; the bill of costs sought to recover unpaid fees; the taxing master applied the correct Advocates Remuneration Order; the amount awarded by the taxing master was reasonable, fair and just; the taxing master laid her basis of the award on what had been filed as at the time the court was rendering its decision; all pleadings were properly filed and served; the delay in receiving the ruling did not invalidate the taxation process; the Respondent, on its own volition, failed to participate in the proceedings yet it was afforded ample time and opportunity time and again; and no substantial issues of law had been raised.
5. The Applicant urged the court to dismiss the Chamber Summons dated 10<sup>th</sup> January 2024 as time barred and without merit; and to uphold the taxing officer's determination by entering judgment in favour of the Applicant for the sum of Kshs.484,045 with interest @14% per annum from 11<sup>th</sup> November 2023 payment in full.
6. The second application is a Notice of Motion application dated 3<sup>rd</sup> July 2024 filed by the Applicant. It seeks the following reliefs:
  1. THAT the Honourable Court be pleased to enter judgment/decree for Kenya Shillings four hundred and eighty (sic) thousand and forty-five (Kshs.484,045/-) together with incidentals hereto tabulated as hereunder:

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TOTAL Kshs.484,045/-
  2. THAT interest be provided for at 14% per annum from 17<sup>th</sup> November 2023 until payment in full;
  3. THAT the cost of the application be awarded to the applicant.
7. The application is based on the grounds set out in the body of the Motion and supported by the supporting affidavit sworn on 3<sup>rd</sup> July 2024 by Mohamed Ferhan Chaudhri, a partner in the Applicant firm. The Applicant contended that its bill of costs dated 30<sup>th</sup> September 2022 was taxed on 19<sup>th</sup> September 2023 at Kshs.484,045.00 and a certificate of taxation issued on 17<sup>th</sup> November 2023. That the Respondent has continuously failed to pay the legal fees, hence the application is merited. Further,



- that the Respondent is facing liquidity crisis and the recovery of the funds is in jeopardy. It was emphatic that it was entitled to legal fees, a fact not denied by the Respondent. It prayed that its application be allowed as prayed.
8. Notably, as at the time of writing this ruling, the Respondent had not filed any response to this particular application.
  9. All the applications were directed to be canvassed by way of written submissions.
  10. The Applicant filed its written submissions and list of authorities dated 15<sup>th</sup> November 2024. It submitted that the reference was filed outside the 14-days statutory limited period and hence time barred. It cited several decisions to urge this Court to find that the reference was improperly before court. It was its submission that no substantive issues of law or fact were raised to warrant an interference of the taxing master's decision. It urged the Court to find that the Taxing Officer's decision was based on sound legal principles and prayed that the reference be dismissed.
  11. The Respondent filed written submissions dated 7<sup>th</sup> November 2024 in respect of the first application, the Chamber Summons dated 10<sup>th</sup> January 2024. It adopted the contents of its application and submitted that the taxing master made prejudicial errors of principle and acted in grave error warranting this Court to set aside those findings. That since there was a pending application to amend the bill of costs, the taxing master ought to have determined the bill of costs upon dealing with the application for amendment. It was emphatic that the Applicant's dues had been paid in full. Furthermore, that the decision was per incuriam as the taxing master applied the wrong Advocates Remuneration Order. It submitted that the award on instruction fees was grossly and manifestly excessive as well as unlawful. That in addition, the taxing officer ought to have applied the judgment sum in awarding instruction fees.
  12. The Respondent challenged the bill of costs stating that item 2 amounted to double taxation and unjust enrichment. That item 3 ought to be disallowed since it only gave general figures. Finally, it submitted that it had indeed overpaid the Applicant. It stated that it had paid Kshs.1, 565, 000.00 in legal fees whereas the fees due was Kshs.180, 000.00. It therefore sought a refunded for Kshs.1, 396, 181.00.
  13. I have considered the applications, the affidavits, the annexures thereto and the law. Before delving into the merits or otherwise of the Chambers Summons dated 10<sup>th</sup> January 2024, the preliminary issue arising for determination is whether the application is fatal for being time barred. It is not in contention that indeed it was filed out of time, more than 14 days after the taxing Officer rendered its reasons. Notably in the application the Respondent has only invoked Paragraph 11 (1) and (2) of the Advocates Remuneration Order which provides 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.



14. Paragraph 11(4) of the said Order, aids those caught up by time by requiring that they apply to the High Court for enlargement of time. It provides as follows:

“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 so be made notwithstanding that the time sought to be extended has expired.”

15. My understanding of paragraph 11(4) is that when a party is confronted with limitation of time, it must apply for an extension before filing the reference out of time. This application for enlargement of time is distinct and separate from the substantive reference. In essence, a party must first seek and obtain leave to file the reference beyond the prescribed period before submitting the substantive reference. Filing a reference with omnibus prayers is procedurally improper. The application to extend time should be based under the provisions of paragraph 11(4) as a stand alone and precede the reference. This principle was clearly established in the Supreme Court case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR.

16. In the present case, the Respondent sought leave to file the reference out of time within the body of its reference instead of filing a separate application. It is undisputed that the reference was filed beyond the allowable time, yet the Respondent failed to follow the correct procedure in seeking leave. This procedural error cannot be remedied by invoking the oxygen principles or the provisions of Article 159 of *the Constitution*. Consequently, the reference dated 10th January 2024 is incompetent.

17. Turning to the Applicant’s Notice of Motion dated 3<sup>rd</sup> July 2024, section 51(2) of the *Advocates Act* provides:

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

18. The Applicant’s bill of costs dated 30<sup>th</sup> September 2022 was taxed on 19<sup>th</sup> September 2023 at Kshs.484,045.00 and a certificate of taxation issued on 17<sup>th</sup> November 2023. The application is unopposed. I have also found that the taxing master’s decision has not been varied or set aside. The Applicant is therefore entitled to the benefits flowing from section 51 (2) of the Act.

19. In the circumstances, I do make the following orders

- a. The reference dated 10th January 2024 is incompetent and is therefore struck out with costs.
- b. The Notice of Motion dated 3<sup>rd</sup> July 2024 is merited judgment is entered in favor of the Applicant as against the Respondent in the sum of Kshs.484, 045.00. The Applicant shall also be awarded costs of this application and interest therein at the rate of 14%p.a. from the date of this judgment until payment in full.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**RHODA RUTTO**



**JUDGE**

