



REPUBLIC OF KENYA



KENYA LAW
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**Chaudhri & Associates v Lady Lori (K) Limited (Miscellaneous Application
E539 of 2022) [2025] KEHC 6863 (KLR) (Crim) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS APPLICATION E539 OF 2022
RC RUTTO, J
MAY 16, 2025**

BETWEEN

CHAUDHRI & ASSOCIATES APPLICANT

AND

LADY LORI (K) LIMITED RESPONDENT

RULING

1. This matter came up for determination as part of a series of matters involving the same parties. The other matters in the series are Miscellaneous E536 of 2022 and E539 of 2022. Directions were taken in Miscellaneous E536 of 2022 where it was directed that the hearing of the Notice of Motion application dated 3rd July 2024 filed by the Applicant and the Chamber Summon Application dated 10th January 2024 filed by the Respondent will be heard together. Further directions on filing of submissions and a date for Ruling were issued in file No. E536 of 2022.
2. At the time of writing this ruling, and guided by the directions issued in file number E536 of 2022, I sought to retrieve the two applications from the Court Filing and Tracking System. Upon the perusal of the system, I noted that the only application filed was that by the Respondent namely, Chamber Summon Application dated 10th January 2024. There was no application by the Appellant.
3. Thus, based on the foregoing revelation, the only application for determination before this Court is a reference, by way of a Chamber Summons Application dated 10th January 2024, filed by the Respondent. The application is seeking the following reliefs:
 1. That the Honourable Court be pleased to set aside the Taxing Master's determination made on 16/11/2022 finding that there was a retainer between the applicant and the respondent;



2. That the Honourable Court be pleased to set aside the Taxing Master's determination made on 16/11/2022 on item number 1 of the Applicant's Advocate-Client Bill of Costs dated 15/02/2019;
3. That the Honourable Court be pleased to grant leave to file the reference out of time;
4. That the costs of this reference be awarded to the objector.
4. The application is supported by the replying affidavit sworn on 10th January 2024 by Moses Tumu, advocate instructed to represent the Respondent and, on the grounds, set out on the face of it. The Respondent contended that it was dissatisfied with the taxing master's decision dated 16th November 2022 and proceeded to file its notice of objection dated 17th November 2022. It also requested for reasons for the decision from the taxing master.
5. The Respondent has urged this Court to allow the application for the following reasons, that: the taxing officer misdirected herself entirely in finding that a client/advocate relationship existed between the Applicant and the Respondent; erred in finding that there was any retainer between the Applicant and the Respondent; taxed a bill that was time barred; awarded an inordinately high figure of KShs.100,000/= to the Applicant/advocate against the provisions of the Remuneration Order applicable; offended the known principles of taxation 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.
6. The application is vehemently opposed by a replying affidavit, sworn on 3rd November 2024 by Mohamed Ferhan Chaudhri, a partner in the Applicant 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 28th August 2024; there was an outstanding balance of fees when the advocate/client bill of costs was filed; the taxing master applied the correct Advocates Remuneration Order; the amount awarded by the taxing master was reasonable, fair and just; the Reference is time barred having been filed outside the 14 days statutory period; 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 and; the Reference was only motivated by the Applicant's Notice of Motion dated 3rd July 2024.
7. The Respondent(Applicant above) urged the Court to dismiss the Chamber Summons dated 10th January 2024 for being time barred and without merit; and to uphold the taxing officer's determination delivered on 11th November 2023 by entering judgment in favour of the Applicant for the sum of kshs.100,000 with interest at 14% per annum from 16th November 2022 until payment in full.
8. The application was canvassed by way of written submissions.
9. The Applicant's filed its written submissions and list of authorities dated 15th November 2024. It submitted that the Respondent filed the reference outside the 14-day period prescribed by the Advocates Remuneration Order, 2014 and hence was 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 with the taxing master's decision. Further, 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.
10. The Respondent filed written submissions dated 7th November 2024. It submitted that the taxing officer made a prejudicial error in principle and applicable law by taxing a bill between parties that had



no client-advocate relationship; the bill of costs as presented was time barred by section 4(1) of the Limitation of Actions Act and was for striking out. They urged the Court to set aside the taxing officer's decision in its entirety and to strike out the Bill of Costs

11. I have considered the application, the affidavits, and the law. Before delving into the merits or otherwise of the Chambers Summons Application dated 10th January 2024. The preliminary issue arising for determination is whether the application is fatal for being time barred. While the notice of objection was filed within the allowed timelines, it is not in contention that indeed the application was filed out of time; more than 14 days after receipt of reasons. . Paragraph 11 (1) and (2) of the Advocates Remuneration Order provide:

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.

12. Paragraph 11(4) of the said Order, aids those caught up be 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.”

13. My understanding of paragraph 11(4) is that when a party is affected by a limitation of time, it must invoke paragraph 11(4) and 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 is a stand alone substantive application and precede the reference, which is only filed after leave extending time is granted. 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.

14. 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 and is therefore struck out with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 16TH DAY OF MAY, 2025.

RHODA RUTTO

JUDGE



In the presence of;

.....Applicant

.....Respondent

Sam, Court Assistant

