



Njoroge v Capital Markets Authority & 5 others (Miscellaneous Application E589 of 2024) [2025] KEHC 6303 (KLR) (Commercial and Tax) (16 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E589 OF 2024**

RC RUTTO, J

MAY 16, 2025

BETWEEN

LUCY MUTHONI NJOROGE APPLICANT

AND

THE CAPITAL MARKETS AUTHORITY 1ST RESPONDENT

BOC HOLDINGS 2ND RESPONDENT

BOC KENYA PLC 3RD RESPONDENT

CARBACID INVESTMENTS PLC 4TH RESPONDENT

AKSAYA INVESTMENTS LLP 5TH RESPONDENT

COMPETITION AUTHORITY OF KENYA 6TH RESPONDENT

RULING

1. This Ruling is in respect of the 4th & 5th Respondents (hereinafter referred to as the “Objectors”) Preliminary Objection dated 27th September 2024 against the Applicant’s Chamber summons application dated 22nd July 2024. The Application challenges the decision of the taxing officer pursuant to the ruling delivered on 7th June 2024 and the Certificate of Taxation dated 19th July 2024 in respect to the 4th and 5th Respondent’s Party and Party Bill of Costs dated 19th April 2023 arising from Nairobi High Court Commercial Petition Number 001 of 2021.
2. The grounds for the 4th and 5th Respondents’, Preliminary Objection are that:-
 - a. The Application being an objection to the Ruling dated 7th June 2024 (the Ruling) on the 4th and 5th Respondent’s Bill of Costs dated 19th April 2023, has been filed as a separate suit (being High Court Miscellaneous Application No. E589 of 2024), as opposed to being



filed within the proceedings within which the Ruling originated (being High Court Petition No. 001 of 2021- Lucy Muthoni Njoroge versus The Capital Markets Authority & 5 others), rendering the same fatally defective.

- b. Without prejudice to the foregoing, the Application is premature and has been filed without due regard and adherence to the provisions of Paragraphs 11 (1) & (2) of the Advocates Remuneration Order 2014 as the Taxing Officer (Honourable Mary Osoro) has yet to issue the Applicant with the detailed reasons for her Ruling dated 7th June 2024, following the Applicant's Objection dated 13th June 2024.
3. When the matter came up for directions on 30th September 2024, the court directed that the Preliminary Objection be heard on priority and parties were directed to file and exchange submissions in respect to the Preliminary Objection.
4. The objector's submissions are dated 9th October 2024 while the Applicant's submissions are dated 15th October 2024.

Objectors' Submissions

5. Counsel for the Objectors provided a brief factual background of the case and identified two issues for determination: (i) whether the application, having been filed in a new suit as opposed to the initial suit, is properly before the court, and (ii) whether the procedure set out under Rule 11 of the Advocates (Remuneration) Order was adhered to.
6. On the first issue, counsel submitted that the procedure for objecting to a taxing officer's decision is provided under Rule 11(1) and 11(2) of the Advocates (Remuneration) Order and which requires that a party aggrieved by the taxing officer's decision file an objection within the same proceedings from which the decision emanated. However, counsel noted that, from the court record, the application was filed in a new suit rather than within the original suit. Consequently, he urged that the application is incompetent, and the court lacks jurisdiction to entertain it. The Objectors relied on the cases of Samuel Kivuti Ciriba v Joel Kithaka Maringa [2017] KEHC 434 (KLR) and Jaldesa Tuke Dabelo v Independent Electoral & Boundaries Commission & Another [2015] KECA 1005 (KLR) to support the argument that Rule 11 of the Advocates (Remuneration) Order sets out a mandatory procedure for redress, and failure to comply with it cannot be cured by invoking Article 159 of *the Constitution*.
7. On the second issue, counsel for the Objectors submitted that a party aggrieved by the decision of the taxing officer is required to file a notice of objection within fourteen (14) days of the decision, specifying the items being objected to. That upon receipt of such notice, the taxing officer is afforded an opportunity to provide reasons for the contested items. If the objecting party remains dissatisfied, they may, within fourteen (14) days of receiving the taxing officer's reasons, approach the court by filing a chamber summons application and serving all parties concerned. The Objectors submitted that the Applicant, despite issuing a notice of objection, proceeded to file the instant application without first awaiting the taxing officer's detailed reasons. While relying on the case of Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited [2017] KEHC 1032 (KLR), the Objectors submitted that the Applicant failed to indicate in her notice the specific items being contested, thereby rendering the application procedurally flawed.
8. The Objectors concluded by submitting that the application is fatally defective and that the court lacks jurisdiction to entertain it. They further argued that the application is premature, as the taxing officer has not yet issued the parties with detailed reasons for her ruling.



Applicant's Submissions

9. Counsel for the Applicant provided a brief background of the matter. He submitted that on 13th June 2024, the Applicant issued a notice to the Deputy Registrar objecting to the taxing officer's decision and simultaneously requested the reasons for the decision as well as a certified copy of the Ruling, in order to facilitate the filing of a reference. The Applicant subsequently obtained a certified copy of the Ruling delivered on 7th June 2024 on 12th July 2024 and thereafter filed the reference before this court. The filing of the reference prompted the Objectors to raise the present Preliminary Objection. The Applicant framed one issue for determination, that is, whether it complied with the provisions of Rule 11(1) and (2) of the Advocates (Remuneration) Order.
10. The Applicant submitted that she duly complied with Rule 11(1) by filing a notice of objection and requesting the taxing officer's reasons for the decision. She stated that upon follow-up, she obtained a certified copy of the Ruling on 12th July 2024, which contained the taxing officer's reasons. That accordingly, pursuant to Rule 11(2), she filed the present application before the court. The Applicant contended that she had adhered to both the form and substance of the procedure set out under Rule 11 of the Advocates (Remuneration) Order.
11. The Applicant, relied on the cases of *Boyes v. Gathure E.A.* [1969] 385, *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 6 Others* [2013] eKLR, and *Microsoft Corporation v. Mitsumi Computer Garage Limited & Another* [2001] eKLR, to submit that, without prejudice, the failure to file a reference within the same suit in which the taxation was conducted is not fatal. Counsel urged the court to adopt a substantive justice approach so as not to penalize the Applicant for what is merely a technical procedural lapse.
12. In response to the Objectors' contention that the reference is premature due to the absence of reasons from the taxing officer, the Applicant submitted that she received a certified copy of the Ruling on 12th July 2024, which included the reasons for taxing the Objectors' costs at Kshs. 26,847,322. Citing *Vincent Kibiwott Rono v. Abraham Kiprotich Chebet & Another* [2022] eKLR and *Evans Githiga Advocates v. Kenya Commercial Bank Limited* [2012] eKLR, the Applicant submitted that the Ruling obtained after the issuance of a notice of objection contained sufficient reasons, thereby satisfying the requirements under Rule 11 of the Advocates (Remuneration) Order. The Applicant also relied on the case of *Abdirahman Abdi v. Safi Petroleum Products Limited & 6 Others* [2011] eKLR and invoked the provisions of Article 159(2)(d) of *the Constitution*, to urge the court to administer justice without undue regard to procedural technicalities.
13. The Applicant concluded by submitting that the court ought to dismiss the Objector's preliminary objection dated 27th September 2024 and proceed to hear and determine the Applicant's chamber summons dated 23rd July 2024.

Analysis and Determination

14. I have considered carefully the notice of preliminary objection and the written submissions by the respective parties in support of their various arguments. I note that the only issue for determination is whether the reference offends Paragraph 11 of the Advocates Remuneration Order.



15. The procedure for the challenge of a taxing officer's decision is provided under Rule 11 of the Advocates Remuneration Order which provides:

“(1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which the 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.”

16. From the foregoing, it is clear that under Rule 11 of the Advocates Remuneration Order, a party aggrieved by the decision of the taxing officer must issue a notice in writing requesting reasons for the decision within fourteen (14) days of the ruling. Thereafter, the reference must be filed within fourteen (14) days of receiving those reasons.

17. To begin with, and pursuant to Rule 11(1) of the Advocates Remuneration Order, it is not disputed that the Applicant issued a written notice of objection to the taxing officer and requested reasons for the decision, including a certified typed copy of the Ruling. The import of Rule 11(1) is that once a notice of objection has been filed, the taxing officer is required to provide reasons for the decision. Where the ruling already contains those reasons, the aggrieved party need not await a fresh ruling from the taxing officer but may proceed to file a reference without delay. In the case of *National Oil Corporation Limited v Real Energy Limited & another* [2016] eKLR Eklr where it was held that:

“In my view, there is no magic in requiring the Taxing Master to furnish reasons before making a reference. Where reasons are contained in the decision, a party ought not seek the same simply because it is fashionable to do so. Accordingly, nothing turns the issue that the Applicant did not seek the reasons for the decision before filing the reference.”

18. The Court in the case of *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* (2) (2006) 1 EA 5 held 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 which 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.”

19. Noting that the Applicant had requested for reasons for the taxing officer's decision and was subsequently issued with a certified copy of the Ruling, which contains reasons on the face of the decision, this Court finds that the Applicant complied with the provisions of Rule 11(1) of the Advocates Remuneration Order.

20. With regard to compliance with Rule 11(2), and specifically the requirement that a reference be filed within the proceedings from which the ruling originated, that is, High Court Petition No. 001 of 2021



Lucy Muthoni Njoroge v. The Capital Markets Authority & 5 others. It is noted that the current miscellaneous application was filed as a fresh suit. The ruling under which the taxation was conducted emanated from a different cause. The Applicant has not provided any legal basis or explanation to justify the decision to file the application in a separate matter. While the Applicant has urged the Court to invoke Article 159 of *the Constitution* to cure this omission, the circumstances suggest that the Applicant was fully aware that the reference ought to have been filed in the same matter in which the Bill of Costs was taxed. The pertinent question, therefore, is whether the invocation of Article 159 of *the Constitution* is justified in the circumstances to cure the procedural defect arising from the Applicant's omission.

21. In addressing the issue at hand, this Court's understanding position is that under Rule 11 of the Advocates Remuneration Order, a reference filed before a Judge by way of Chamber Summons ought to be lodged within the same suit in which the taxation was conducted. This requirement ensures that the Judge is able to trace the sequence of events in the prior proceedings and follow through with subsequent filings. Put differently, since a reference is not in the nature of an appeal where a formal record of appeal would ordinarily be filed alongside the typed proceedings, it follows that the appropriate forum for filing a reference is within the original suit where the taxing officer rendered the impugned decision. Accordingly, and based on the foregoing reasoning, this Court finds that failure to file the application in the correct cause goes to the substratum and Article 159 of *the Constitution* cannot be invoked to cure the procedural misstep of filing the reference in a separate and unrelated suit.
22. I agree with the authority relied upon by the Objectors, that is the case of Samuel Kivuti Ciriba versus Joel Kithaka Maringa [2017] KEHC 434 (KLR) where the court stated that all matters under Paragraph 11 should be done in the same file in respect of which the bill was taxed. Additionally, I agree with the Learned Judge in the case of Independent Electoral and Boundaries Commission v John Omollo Nyakongo t/a H.R Ganijee & Sons [2020] KEHC 2148 (KLR) where the court held that;
 - “24. My understanding of the jurisdiction of this court under rule 11 of the Advocates (Remuneration) Order is that the court exercises its jurisdiction on the platform of the suit in which the impugned decision of the Taxing Officer was made. It is not exercised in a separate or fresh suit. Exercise of that jurisdiction is invoked through the filing and service of an objection under rule 11 (1). The Notice of Objection sets out the contested items and findings, where necessary. Upon filing of the Notice of Objection within the suit, and upon service of the Notice, the Objector is required to file a reference to the Judge by way of Chamber Summons within the same suit. The Judge thereafter exercises jurisdiction under rule 11 on the platform of the suit in which the impugned decision of the Taxing Officer was made.”
23. Similarly, in the present application, the miscellaneous application filed constitutes a fresh suit. Therefore, in the circumstance it would be improper to exercise jurisdiction under Rule 11 of the Advocates Remuneration Order if I were to determine the application. This is because, the impugned decision of the taxing officer was made in a different suit and the subject matter of the current proceedings contained within that separate suit.
24. Consequently, I find that the Notice of Preliminary Objection dated 27th September 2024 is merited in respect of the first ground. As a result, the suit herein is struck out with costs on the basis that the court lacks jurisdiction to entertain the application, dated 22nd July 2024, in the context of a fresh suit such as the one before me.

Orders accordingly.



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

RHODA RUTTO

JUDGE

In the presence of

.....Applicant

.....Respondent

Sam Court Assistant

