



**Wambua Kilonzo & Company Advocates v Trident Insurance Company Limited
(Miscellaneous Application E146 of 2024) [2025] KEHC 5923 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION E146 OF 2024**

M THANDE, J

MAY 9, 2025

BETWEEN

WAMBUA KILONZO & COMPANY ADVOCATES ADVOCATE

AND

TRIDENT INSURANCE COMPANY LIMITED CLIENT

RULING

1. By an application dated 17.12.24, the Client/Applicant seeks the following orders:
 - a. That this Honourable Court be pleased to stay execution for costs arising from ruling on taxation by Hon Nancy Makau, Deputy Registrar delivered on 10th December, 2024 in Miscellaneous Application E147 of 2024, pending the hearing and determination of this Reference.
 - b. That the decision of the Taxing Officer, Hon Nancy Makau, Deputy Registrar in the ruling delivered on 10th December, 2024 in Miscellaneous Application E147 of 2024, with respect to item 1 and for lack of attached pleadings to support to the Bill of Costs, be set aside and taxed afresh.
 - c. That in the alternative, this Honourable Court be pleased to order that the Respondent's Bill of Costs with respect to items 1 be taxed afresh by another taxing officer.
 - d. That this Honourable Court be pleased to give orders or directions hereof that it may deem fit to give hereof.
 - e. That the costs of this Application be in the cause.
2. The grounds upon which the Application is premised are set out therein and in the affidavit of James Onjoro, are that the Client/Applicant is aggrieved by the ruling of the taxing officer delivered on 10.12.24 with respect to item 1 in the bill of costs dated 13.8.24. The Client/Applicant contends that



the amount awarded is excessive and outrageous. Further that the taxing officer declined to review the same on ground that no pleadings were annexed to support the items in the bill of costs. It was further averred that the taxing officer failed to take note that the Client/Applicant had served the replying affidavit which erroneously or but by mistake of fact had not been uploaded and filed to be accessed by the taxing officer. This was discovered after the ruling was delivered. The Client/Applicant asserted that it is in the interest of justice that the decision of the taxing officer is set aside and the matter taxed afresh failing which the Client/Applicant will suffer great loss and damage.

3. The Respondent opposed the Application by a replying affidavit sworn on 13.1.25 by Geoffrey Kilonzo and a preliminary objection of even date.
4. It is the preliminary objection that is the subject of this ruling. The objection raised is that the Application offends the mandatory provisions of Paragraph 11 of the *Advocates (Remuneration) Order* (ARO); that the objection is vague as it does not indicate the items objected to; that the Client/Applicant has not attached the reasons given by the taxing officer as required by the *ARO* and the Court has nothing to fault the taxing officer on; that the procedure adopted by the Client/Applicant is alien and unprescribed by law; that the Application is incurably defective and an abuse of the court process and should be struck out with costs.
5. The Client/Applicant responded to the preliminary objection vide an affidavit sworn on 1.2.25 by James Onjoro. He averred that the Application does not offend Paragraph 11 of the *ARO* as an objection to taxation was filed. Further, that on the advice of the DR, the reference was filed in 14 days; that the scope of the Application is in respect of filing the replying affidavit on the e-filing portal; that the Application is not defective nor an abuse of the court process.
6. In a further affidavit sworn on 5.2.25, Geoffrey Kilonzo, advocate averred that the CTS shows that the Client/Applicant's replying affidavit was filed under 0-rated documents. The action of the Client/Applicant's advocate is negligent and ignorant and undeserving of the Court's discretion.
7. In its submissions, the Client/Applicant maintains that the Application was filed in compliance with Paragraph 11 of the *ARO* and is properly before the Court. The Advocate/Respondent on the other hand contends that the said provisions were not complied with and that the Application is defective and ought to be struck out.
8. The parameters for consideration of a preliminary objections are well settled. In the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, Sir Charles Newbold rendered himself thus:

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

9. On his part, Law JA as he held:

[A] Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.



10. A preliminary objection must be raised on a pure point of law. It cannot be raised if facts must be ascertained and what is sought must not be the exercise of judicial discretion. A preliminary objection should be argued on the assumption that all the facts pleaded by the other side are correct, and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
11. Paragraph 11 of the *Advocates Remuneration Order* 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.
 3. ...
12. A party seeking to challenge the decision of a taxing officer is required to, within 14 days thereof, give notice in writing to the taxing officer of the items of taxation to which he objects. In this instance, there is on record a notice of objection dated 17.12.24 and filed on even date, within the 14 day period stipulated in Paragraph Rule 11(1) of the *ARO*. The notice reads in part that “Trident Insurance Company Limited do hereby object to Ruling on Taxation delivered by Hon. Nancy Makau on 10th December, 2024 herein.” The notice was copied to the Advocate/Respondent.
13. I hold the view that the notice constitutes sufficient notice to the court and the Advocate/Respondent of the Client/Applicant’s intention to challenge the taxing officer’s entire ruling of 10.12.24. I do therefore find that there was compliance with the provisions of Paragraph 11 of the ARO. Accordingly, the preliminary objection is unmerited and the same is dismissed with costs to the Client/Applicant.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 9TH DAY OF MAY 2025

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M. THANDE

JUDGE

