



**Abubakara v Kanyotu (Civil Appeal 38 of 2017) [2025] KEHC 7820 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7820 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL 38 OF 2017  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**HASIA IRERI ABUBAKARA ..... APPLICANT**

**AND**

**JANE GATHONI KANYOTU ..... RESPONDENT**

*(Being a Reference arising from the decision of the Taxing Master,  
Hon. Wanyama C, Deputy Registrar, Kerugoya High Court)*

**RULING**

1. The Applicant filed a Chamber Summons Application dated 25<sup>th</sup> July 2023 which sought the revision or setting aside of the Taxing Master's Ruling dated 5<sup>th</sup> July 2023.
2. The Application was brought under the provisions of Order 53 Rule 1 (2) of the Civil Procedure Rules. It was based on the Supporting Affidavit sworn by Hasia Ileri Abubakar on 25<sup>th</sup> July 2023.
3. I hereby summarize the respective parties' cases and their submissions in the succeeding paragraphs.

**The Applicant's case.**

4. The Applicant stated that the Taxing Master's Ruling was erroneous, unreasonable and excessive as he failed to take into account certain factors in taxing the Bill of Costs. The Applicant further stated that since the court held that it had no jurisdiction to determine the Appeal, then it had no right to award costs against her. That the matter should be transferred to the appropriate court to determine the matter.
5. Through her written submissions dated 9<sup>th</sup> April 2025, the Appellant submitted that the amount taxed was excessive and it demonstrated an error in principle. She relied on Republic v Minister for Agriculture and 2 others Ex-Parte Samuel Muchiri W'Njuguna and 6 others (2006) eKLR.



6. It was the Applicant's submission that some contested items were not reviewed downwards and the Taxing Master did not give reasons why. She relied on *Nyagito & Co. Advocates v Doinyo Lessos Creamaries Ltd* (2014) eKLR. That the Taxing Master failed to give reasons for allowing items 4, 5 and 6.

### **The Respondent's case**

7. The Respondent did not file a response to the Reference but filed his written submissions. Through her submissions dated 12<sup>th</sup> March 2025, the Respondent submitted that the present Application was incompetent and bad in law. That the Appellant was represented in the Appeal by R. Muthike Makworo & Co. Advocates. That the present Application had been filed by the Applicant in person after Judgment on her Appeal had already been delivered. The Respondent further submitted that the present Application offended the mandatory provisions of Order 9 Rule 9 of the *Civil Procedure Rules* and *Jackline Wakesho v Aroma Case* (2014) eKLR.
8. It was the Respondent's submission that the joinder of the Chamber Summons dated 25<sup>th</sup> July 2023 and the Petition to review the Bill of Costs was improper and bad in law. It was the Respondent's further submission that the present Application was anchored on Order 53 Rule 1 of the *Civil Procedure Rules* which provided for Judicial Review Applications.
9. The Respondent submitted that the Applicant had not complied with the provisions of Rule 11 of the *Advocates Remuneration Order* and the Application ought to be dismissed.
10. I have gone through and considered the Chamber Summons Application dated 25<sup>th</sup> July 2023, the Applicant's written submissions dated 9<sup>th</sup> April 2025 and the Respondent's written submissions dated 12<sup>th</sup> March 2025. The two issues that I have sieved for my determination were: -
- i. Whether the Application was defective
  - ii. Whether the Application was merited.

#### **i. Whether the Application was defective.**

11. The Respondent submitted that the Application was defective as it offended the provisions of Order 9 Rule 9 of the *Civil Procedure Rules*. Order 9 Rule 9 of the *Civil Procedure Rules* provides: -

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.  
(Emphasis mine)

12. In *Kochieng v County Assembly Service Board & another* [2023] KEHC 1681 (KLR), the court held: -
- “Order 9 Rule 9 of the *Civil Procedure Rules* was meant to safeguard the interests of an advocate who has dealt with a matter to its conclusion.....”



13. Similarly in *Ewins v Abdalla* [2022] KEELC 14693 (KLR), while quoting *Abamed Mobamud Adam v. Jimmy Tomino & 2 Others* Nakuru HCCC No. 244 of 1998, held: -

“The mischief that was intended to be cured by the provisions of Order 3 rule 9A was to ensure that after judgement, a change of advocates was not effected without notifying the advocate who was on record. In other words, it was meant to secure the interest of the advocate who acted for the party up to the judgement.”

14. I have noted from the record that the Applicant was represented by the firm of R. Muthike Makworo & Co. Advocates in her Appeal and was represented to its conclusion on 16<sup>th</sup> March 2023 when this court delivered its Judgement on the Appeal. I have also noted that the said firm was represented during the delivery of the Judgement.

15. The Respondent then filed his Bill of Costs dated 20<sup>th</sup> March 2023 and the Appellant through the firm of R. Muthike Makworo & Co. Advocates filed on Objection dated 17<sup>th</sup> May 2023. I have also noted that the said firm was represented during the delivery of the Taxing Master’s Ruling on 5<sup>th</sup> July 2023.

16. Being aggrieved by the Taxing Master’s Ruling, the Applicant filed the present Application in person. I have carefully gone through the record and there was no leave sought by the Applicant to appear in person having engaged the firm of R. Muthike Makworo & Co. Advocates. It is imperative to note that the Bill of Costs was filed within the Appeal file and not as a Miscellaneous Application. The provisions of Order 9 Rule 9 of the *Civil Procedure Rules* as framed are mandatory, meaning the Applicant had to demonstrate that she had leave of the court to act in person. There was no such evidence and this in my view makes the present Application incompetent *ab initio*.

17. The Court of Appeal in *Simon Kimutai & another v Sammy Makove (Commissioner of Insurance) & another* [2018] KECA 271 (KLR) held: -

“.....Having filed incompetent pleadings in circumstances where a statute makes mandatory provisions as to content and procedure, the appellant’s attempt to cure an incompetent suit must fail.....”

18. Flowing from the above, it is my finding that this court lacks jurisdiction to determine an incompetent Application. To proceed and determine it would be an illegality and would be an affront to the provisions of Order 9 Rule 9 of the *Civil Procedure Rules*.

19. In the end, the Chamber Summons dated 25<sup>th</sup> July 2023 is struck out with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF JUNE, 2025  
IN THE PRESENCE OF:**

N/A for the Appellant

Muchira for the Respondent

Siele/Mark (Court Assistants)

.....

**J.K. NG’ARNG’AR**

**JUDGE**

