



**Chemnjor & another v George Kirumba Mbiyu t/a Mutonyi,
Mbiyu & Co. Advocates (Miscellaneous Reference Application
E002 of 2024) [2025] KEHC 8304 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MISCELLANEOUS REFERENCE APPLICATION E002 OF 2024
RB NGETICH, J
JUNE 11, 2025
IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA
AND
IN THE MATTER OF THE ADVOCATE-CLIENT BILL OF COSTS.
AND
IN THE MATTER OF REFERENCE FROM THE RULING OF THE
TAXING OFFICER (DEPUTY REGISTRAR) KABARNET
AND
IN THE MATTER OF ADVOCATES-CLIENT COSTS RELATING TO
KABARNET SUCCESSION CAUSE NO.2 OF 2017 (SARAH WANJIRU
GITHICHI -VS- TOM KIPTOO CHEMNJOR & KENNETH KIBET
CHEMNJOR)**

BETWEEN

TOM KIPTOO CHEMNJOR 1ST APPLICANT

KENNETH KIBET CHEMNJOR 2ND APPLICANT

AND

**GEORGE KIRUMBA MBIYU T/A MUTONYI, MBIYU & CO.
ADVOCATES RESPONDENT**



RULING

1. The Applicant has moved this court vide an application dated 23rd October, 2024 brought Pursuant to Rule 11 of the Advocates (Remuneration) order, Section 3 and 3A of the Civil Procedure Act and Article 159 of the Constitution of Kenya 2010 seeking the following orders:-
 - i. That the Honourable Court be pleased to grant leave to the 1st and 2nd Applicants to file this reference out of time against the entire decision and ruling of Taxing Officer rendered on 6th April, 2023 in Kabarnet High Court Misc Cause No. 4 of 2021.
 - ii. That the Honourable Court be pleased to grant a stay of execution of the Certificate of costs, Orders dated 18th December, 2023 and all the consequential orders in Kabarnet High Court Misc Cause No. 4 of 2021 pending the hearing and determination of the reference.
 - iii. That the Honourable Court be pleased to set aside, vary, revoke and or vacate the Taxing Officer's decision and Ruling dated 6th April, 2023, Orders dated 18th December, 2023 and all the consequential orders in Kabarnet High Court Misc Cause No. 4 of 2021.
 - iv. That this Honourable Court exercises its inherent jurisdiction to re-tax the Advocates-Client bill of costs dated 12th July, 2021 or in the alternative, the same be remitted to a different Taxing Officer for fresh taxation.
 - v. That this Honourable Court issues a determination that the monies paid by the Respondent in the sum of Kshs 275,000/= be considered as paid to the Respondent and deducted upon re-taxation of the Advocate/Client bill of costs herein.
 - vi. That the costs of this application be in the cause.
2. The application is based on the grounds that the Taxing Officer while on transfer from Kabarnet to Lodwar Law Courts, proceeded to render her decision and or Ruling on the 6th April, 2023 from Lodwar Law Courts.
3. That the Advocate/Client Bill of Costs in issue was taxed at 946, 588.80/= and it took too long for the file to be returned to Kabarnet Court Registry and neither the 1st and 2nd Applicants nor their advocates were notified of the Ruling.
4. That the Respondent continued serving Court documents and notices upon the former Advocates, M/s Oumo & Co Advocates or not at all despite having been served with a Notice of Change of Advocates that the firm of M/s Mengich & Co. Advocates came on record for the 1st and 2nd Applicants.
5. That in the circumstances, the firm of M/s Mengich & Co Advocates and consequently the 1st and 2nd Applicants herein learnt of the ruling way after the periods required for seeking the remedies available under Rule 11 of the Advocates Remuneration Order had long lapsed.
6. That whereas the 1st Applicant was away in Canada, the 2nd Applicant was diagnosed with renal failure that saw him hospitalized for the entire period in issue thereby occasioning communication challenges and the predicament facing the 1st and 2nd Applicants is not of their own making, neither deliberate nor by design but excusable systemic lapses and or mistakes.
7. That the Respondent has commenced execution of the Certificate of Taxed Costs and the subsequent Orders dated 18th December, 2023 adopting the same as a judgment of the Court and the 1st and 2nd



Applicants are immensely dissatisfied and aggrieved by the entire Decision and Ruling of the Taxing Officer more particularly items 1, 2, 3-8, 9-35, 38, 39, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58, 59 65, 66, 70 and 71 in that the same is either not proved, extremely unfair or grossly excessive.

8. That the Taxing Officer's decision and Ruling was based on an error of principle and amounted to wrongful exercise of discretion and thus the amount of costs taxed is excessive, unjustifiable and not or at all commensurate with the work rendered by the Respondents.
9. That the 1st and 2nd Applicants had already paid the Advocates fees in the sum of Kshs 315,000/= as demanded by the Respondent in various Fee notes but the same was not factored in the taxation process.
10. That the Respondent did not provide receipts or any proof regarding the costs and disbursements claimed and thus the amount taxed was inordinately excessive and unjustifiable and it is for the foregoing reasons that the 1st and 2nd Applicants pray that this Honourable Court taxes the bill of costs or in the alternative, this court orders that the bill of casts be taxed afresh by another Taxing Officer.
11. The application is supported by an affidavit sworn by Tom Kiptoo Chemnjor who avers that he is duly authorized to swear this affidavit on his behalf and on behalf of the 2nd Applicant.
12. He avers that in taxing the Bill of Costs, the Taxing Officer erred in principle in the taxation of the Bill of costs. He restate grounds on the face of the application and stated that he learnt of the Ruling and judgment when he was served with a Notice to show cause why execution should not issue dated 20th August, 2024 and he immediately contacted their lawyers then on record who informed them that they were not aware of the developments.
13. That certificate of taxed costs was adopted as judgment of court by orders dated 18th December, 2023 and execution was to issue any time and that is why they requested the Deputy Registrar to allow them 21 days within which they can consult and instruct new advocate to represent them.

Response

14. In response to the application, the Respondent filed a replying affidavit sworn by George Kirumba Mbiyu an Advocate in the firm of Mutonyi Mbiyu & Co. Advocates. He avers that the firm filed the Bill of Costs dated 12th July,2021 upon refusal by the Applicants to settle the Fee Note dated 18th January,2020 and that it was the 1st Applicant who gave his firm a go ahead to file the Bill of Costs.
15. He avers that the Bill of Costs was served upon the Applicants' advocates, the firm of Oumo & Co. Advocates who filed a Preliminary Objection which was dismissed on 1st February,2022 and the Bill of Costs was fixed for taxation on 18th May,2022 and no appeal was lodged by the Applicants.
16. That the firm of Mengich & Co. Advocates came on record on 18th May,2022 and appeared for the Applicants in court the same day where parties filed submissions and the ruling date was taken by consent on 8th June,2022.
17. He avers that the court sent Notice of Ruling to the parties after the taxing master was transferred and the Applicants claim to have become aware of the NTSC in August 2024, yet the present Application was filed in October, 2024.
18. He avers that his firm has not been served with a Notice of Change of Advocates by the present Advocate and in addition, a Judgment having been entered, the present advocates are unprocedurally on record for failing to make an application to come on record or file a consent from the previous Advocates hence the present application is incompetent and ought to be struck out.



19. Further, that no sufficient grounds have been adduced to necessitate the granting of orders sought; the application has been brought by a firm wrongly on record and the delay in bringing the application has not been explained.
20. Further, that no materials have been placed on record that the previous Advocate was not aware of the ruling on taxation and in the Bill of Costs filed herein, his firm gave credit and/or indicated the amounts paid by the Applicants and the amount shown in the Bill of Costs dated 12th July, 2021 as paid by the Applicants was Kshs. 301,500/= and in the ruling of the taxing master dated 6th April, 2023 and delivered on 26th April, 2023, a sum of Kshs. 380,602/= was taxed off. He prayed that the application be dismissed.
21. The application was canvassed by way of written submissions.

Submissions by the Applicant

22. The 1st and 2nd Applicants submits that the Advocates/Client Bill of Costs in this matter was taxed at Kshs 946,598.80 in respect to Kabarnet High Court Succession Cause No. 2 of 2017 and that they are aggrieved by the entire decision of the Taxing Officer on the grounds that the same is excessive, unjustified and contrary to the law. The applicants restated grounds of the application and averments in the supporting affidavit and restated that the delay was neither deliberate nor by design but due to excusable lapses and or mistakes and it is in the interest of justice and fairness that this Court exercises its unfettered discretion in favour of the Applicants and grant the orders sought.
23. They submit that the entire decision and ruling of the Taxing Officer more particularly items 1, 2, 3-8, 9-35, 38, 39, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58, 59, 65, 66, 70 and 71 were not proved, extremely unfair, grossly excessive and amounts to wrongful exercise of discretion. The Respondent indicated that the bill is for applying for Confirmation of grant which process is non-complex and straightforward. That the Respondent abandoned the matter midway and in fact did not complete the process of applying for Confirmation of grant in issue and urged this Court to tax the bill of Costs afresh or in the alternative order that the same be taxed afresh by another Taxing Officer and relied on the Court of Appeal decision in the Jeroth Limited -vs-Kiagano & Associates, Civil Appeal No. 66 of 1999 [2002]EA 92.
24. Further that the Taxing Officer's ruling was based on an error of principle and amounted to wrongful exercise of discretion and thus the amount of costs taxed is excessive, unjustified and or at all commensurate with the work rendered by the Respondent; further that the Respondent did not disclose the monies already paid by the Applicants amounting to Kshs 315,000/- and therefore the same could not be factored in the final computations of the taxation process. They submit that the Respondent did not provide receipts or any proof regarding the costs and disbursements claimed and therefore the amount taxed was inordinately excessive and unjustifiable.
25. That in the instant case, the Deputy Registrar issued Orders dated 18th December, 2023 adopting the Taxed Costs as judgment of the Court and it is their submission that the adoption of the taxed costs by the Deputy Registrar is irregular and unprocedural and consequently, it is their prayer that the said judgment be set aside.
26. That despite the irregularity, the Respondent swiftly proceeded to extract the decree, applied for execution and consequently successfully sought for a Notice to show Cause why the Applicants should not be arrested and committed to civil jail.



27. They submit that the application dated 23rd October, 2024 is merited and urge this Honourable Court to exercise its unfettered discretion in favour of the Applicants herein by allowing it in terms of prayer 3, 4, 5 and 6.

Respondent's Submissions

28. The Respondents submits that the application dated 23rd October,2024 has no merit and relies on the Replying Affidavit of George Kirumba Mbiyu sworn on 27th January,2025 and on Rule 11 (1)(2) and (4) of the Advocates Remuneration Order.
29. Counsel submit that the Ruling on the taxation is dated 6th April,2023 and delivered on 26th April,2023 while the present application is dated 23rd October,2024. That the applicant has not explained to court why after having engaged the firm of Mengich to represent him at the taxation on 18th May,2022 did not even ask or enquire of the ruling on taxation until when he was served with the NTSC dated 20th August,2024 and in addition, the applicant has not sought the Affidavit of his previous advocates to explain the delay in filing the reference. They place reliance in the case of Joseph Lekodi Teleu vs Jonathan Paapai & Anor [2022] eKLR and likewise, in Duate Mury Ann Gurre-Vs-Amina Mohamed Mahamood & Another [2014] eKLR and submit that from the above-mentioned authorities, it is clear that a litigant has a duty to follow up on his case after he has instructed an advocate. That in the instant application, the delay of a year and three months is inordinate and the explanation given by the Applicant regarding the delay is not satisfactory and there is no reason to enlarge time for him to file a Reference against the ruling of the Taxing Master.
30. Counsel further submit that the Applicant knew of the taxation and the ruling and had counsel representing him and it is telling that the applicant has not sought an affidavit from the previous advocate and the Applicant has not indicated which of the items were not proved and/or grossly excessive or sought reasons of the taxing officer on these items. Further that the items were not proved and /or grossly excessive without stating which particular items were not proved and which particular items were grossly excessive cannot be a ground for a reference and indicating that the Respondent did not provide receipts for some items is an issue that the Applicant's previous advocate should have raised at the taxation before the taxing officer and cannot be raised in a reference.
31. That the amount of Kshs. 301,500/= paid by the Applicant is clearly indicated in the Bill of Cost dated 12th July,2021 and the taxing master further taxed off a sum of Kshs.380,602/=.
32. Counsel submit that the Bill was a fair representation of the work done on behalf of the Applicant and urge this court to reject the application with costs to the Respondent.

Analysis and Determination

33. I have considered grounds of application herein and averments by both parties together with submissions filed. What is in issue is whether this court should enlarge time to file reference. Rule 11 of the Advocates Remuneration Order which provides as follows:

- “ 11. Objection to decision on taxation and appeal to Court of Appeal
- (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 for his objection.

- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
- (4) The High Court shall have power in its discretion by order to enlarge time fixed by subparagraph (1) or (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 may be so made notwithstanding that the time sought to be enlarged may have already expired."

34. In this case, Ruling on the taxation is dated 6th April,2023 and delivered on 26th April,2023 while the present application is dated 23rd October,2024, almost 7 months after the respondent's bill was taxed. The applicants' reason for the delay is that the Advocate who had been appointed to take over the matter from the Advocate who was previously on record was not served. Mr. Mbiyu indicated that he was not served with notice of change of Advocates and that no leave was sought or consent filed to allow new Advocates to come on record. On the other hand, the firm of Mengich & company Advocates stated that despite notice of change being filed and served on the firm of Mbiyu and company Advocates, they continued to serve the previous law firm with notices. The 1st applicant also indicate that he was away in Canada during the period and the 2nd applicant suffered renal failure and was hospitalized during the period and was unable to follow up the matter. By Mr. Mbiyu stating that they were not served with notice of change nor consent to come on record is a confirmation that the law firm currently on record for the applicants were not notified of delivery of ruling in time to file reference. I am therefore inclined to enlarge time for the applicant to file reference.

35. I also note that the certificate of costs was adopted as judgment of the court by the deputy registrar which is irregular as the same should have been placed before the judge for adoption. In view of the above, I hereby set aside judgment on certificate of costs and direct the matter be placed before another taxing master for taxation.

36. Final Orders:-

- a. Judgement on certificate of costs is hereby set aside.
- b. The applicant is granted leave to file reference out of time. The same to be filed within 14 days from today's date.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 11TH DAY OF JUNE 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:



Mr. Mbiyu for Respondent.

Mr. Sogoyo for Applicant.

CA, Karanja.

