



**Liya ME Contractors Limited v Robinson O Malombo & Company Advocates (Miscellaneous Civil Application E237 of 2021) [2025] KEHC 8668 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8668 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL APPLICATION E237 OF 2021**

**J NGAAH, J  
JUNE 20, 2025**

**BETWEEN**

**LIYA ME CONTRACTORS LIMITED ..... APPLICANT**

**AND**

**ROBINSON O MALOMBO & COMPANY ADVOCATES ..... RESPONDENT**

**RULING**

1. The application before court is a chamber summons expressed to made under article 159 of *the Constitution*; sections 1A, 1B and 3A of the *Civil Procedure Act*, cap. 21; and paragraph 11(4) of the Advocates Remuneration Order. The applicant seeks the following orders:
  - “ 1. That this application be certified urgent und heard on priority basis ex parte;
  2. That pending the hearing and determination of the Application dated 18<sup>th</sup> day of July, 2024, the Honourable Court be pleased to set aside the taxing officer’s ruling and certificate of costs dated 24<sup>th</sup> November, 2022 as the same was never served upon the respondent/applicant.
  3. That the decision of the Honourable taxing master delivered on 24<sup>th</sup> November, 2022 in so far as the same relates to the reasoning and determination pertaining taxation of the bill of costs be set aside/removed/quashed and vacated by way of reference and all consequential orders be set aside.
  4. That in the alternative to prayer 3, the Honourable court to exercise its inherent jurisdiction and refer the bill of costs for re-taxation or make fresh directions on taxation.



5. That the Honourable Court be pleased to adjust the figures and reassess the fees due to the advocate.
  6. That the costs of the application be in the cause.”
2. The application is supported by the affidavit of George O. Mwimali who has introduced himself in that affidavit as the director of the applicant.
  3. According to Mwimali, he was never served with the bill of costs which culminated in the certificate of costs dated 24 November, 2022 and that he only learned of the taxed bill when he was served with the respondent’s application seeking judgment in the amount indicated in the certificate of costs. In any event, the advocate had been paid his fees which had been agreed at Kshs. 185,000/=.
  4. The application has been opposed and a replying affidavit to this end has been sworn and filed by Robinson Onyango Malombo. According to Malombo, the advocate/ client bill of costs dated 4 November 2024 was duly served upon the applicant on 6 November 2024. As a matter of fact, the applicant’s manager acknowledged service by stamping and signing on the face of the notice.
  5. A copy of an affidavit of service in proof of this fact has been exhibited to the affidavit. In further proof that the applicant was aware of the taxation, it appointed the firm of Messrs. Khaminwa & Khaminwa Advocates to represent it in the taxation proceedings. This is so because, after service of the notice of taxation, the said firm of advocates filed a notice of appointment of advocates notifying all concerned that it had been appointed to act for the applicant.
  6. Malombo has denied that there was ever a retainer agreement between his firm of advocates and the applicant. He states that the application is incompetent because it was filed 18 months after the taxation contrary to paragraph 11 of the Advocates Remuneration Order.
  7. If the applicant’s concern is that the bill of costs was not served and, therefore, the advocate client bill of costs was taxed ex parte, there would have been nothing untoward in the applicant making the appropriate application before the taxing officer to set aside the taxation or the ruling thereof.
  8. Under paragraph 70 of the Advocates Remuneration Order service of notice of taxation is mandatory. It reads as follows:
    72. Notice of taxation to be given by taxing officer  
When a bill of costs has been lodged for taxation as aforesaid the registrar shall, upon payment of the fee prescribed, issue to the party lodging the bill a notice of the date and time (being not less than five days after the issue of such notice, unless a shorter time is specially allowed by the registrar) fixed for taxation thereof and shall also issue a copy of such notice, accompanied by a copy of the bill, to each advocate and other person whose name is endorsed on the bill as entitled to receive notice of the taxation thereof:  
Provided that where any person so entitled to receive notice cannot be found at his last- known address for service the taxing officer may in his discretion by order in writing dispense with service of notice upon such person.
  9. It follows that if the bill is taxed before service of the notice of taxation, as the applicant in this application alleges, a mandatory procedural step would thereby have been omitted and the party against whom the notice ought to have been served would be entitled to ask the taxing master to set aside taxation proceedings conducted without that particular party having been duly notified.



10. A reference under paragraph 11(1) and (2) of the Advocates Remuneration Order presupposes that a party aggrieved by the taxation was aware of the taxation and that even if he chooses not to participate in the taxation proceedings, it must be demonstrated that he was accorded that opportunity, at the very least. This paragraph reads 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.
11. Once served with the taxation notice, and whether or not the party against whom a bill of costs has been filed participates in the taxation proceedings, he would be entitled to be informed of the decision of the taxing officer. If he is not satisfied or is in doubt of the basis of taxation of any particular item in the bill of costs, he is enjoined to give notice in writing of his objection to the taxation of that particular item.
12. It is at this point that the taxing master will give reasons for the taxation of the item in issue. I suppose that if the party is satisfied with the reasons given, the matter ends there but if he is not, then he files a refers the matter to the judge.
13. The point is, a reference under paragraph 11(2) of the Advocates Remuneration Order is filed not because the party upon whom a taxation notice ought to have been served was not served but because a party aggrieved by the decision of the taxing master is not satisfied with the reason or reasons given for taxation of any particular item in the bill of costs. It follows that want of service of notice of taxation cannot be a basis for invoking paragraph 11(2) of the Advocates Remuneration Order.
14. That said, even if it is given that the applicant was always entitled to file a reference, it is apparent that the purported reference has been filed way out of time. To be precise, the reference has been filed one and a half years after the impugned taxation.
15. Not that an aggrieved party cannot file a reference out of time; he can, but in those circumstances, he has to apply to court under paragraph 11(4) of the Advocates Remuneration Order for extension of time. This paragraph reads as follows:
  - (4) 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 be so made notwithstanding that the time sought to be enlarged may have already expired.
16. In the instant reference, the applicant has not sought for the order to enlarge time despite the purported reference having been filed out of time.
17. For the foregoing reasons, I hold that the applicant's application is not viable. On the contrary, it is incompetent, misconceived and an abuse of the due process of this Honourable Court. The preliminary objection against the reference is upheld and the purported reference struck out with costs. Orders accordingly.



**SIGNED, DATED AND DELIVERED ON 20 JUNE 2025**

**NGAAH JAIRUS**

**JUDGE**

