



Njuka v IMA (Suing as the Next Friend & Mother to SM - Minor) (Civil Miscellaneous Application E026 of 2024) [2025] KEHC 12878 (KLR) (16 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL MISCELLANEOUS APPLICATION E026 OF 2024**

**JN KAMAU, J
SEPTEMBER 16, 2025**

BETWEEN

NICODEMUS OWOTSI NJUKA APPLICANT

AND

**IMA (SUING AS THE NEXT FRIEND & MOTHER TO SM -
MINOR) RESPONDENT**

RULING

1. In his Chamber Summons dated and filed on 13th August 2024, the Applicant herein sought an order that the decision of the Learned Magistrate dated 30th July 2024 be set aside and the Bill of Costs be taxed afresh by this court.
2. Maureen Tesot Advocate, swore an Affidavit in support of the said application on behalf of the Applicant.
3. Through the said advocate, the Applicant averred that the Judgment in Vihiga CMCC No 38 of 2019 was delivered on 13th June 2024 and costs were awarded to the Respondent herein. He explained that he intended to oppose the Respondent's Bill of Costs dated 14th June 2024 but did not do so because of internet challenges that were caused by a power outage which resulted in the Trial Court allowing the said Bill of Costs as presented.
4. He stated that it informed his insurance the contents of the said Ruling and being aggrieved by the assessment by the Taxing Officer, instructed his Advocates to write a letter to the Taxing Officer, under its subrogation rights, objecting to the taxation. He averred that despite filing a Notice of Objection, he was not given a certified copy of the said Ruling.
5. He contended that the Taxing Officer failed to take into account the scale fees that were prescribed under the Schedule 7 of the Advocates (Remuneration) Order 2024 for court attendances and services.



- He further averred that the Taxing Officer made serious errors in principle in allowing the Bill of Costs as presented and thereby arrived at the wrong decision.
6. He was emphatic that the said taxation was therefore irregular and sought that the decision of the Taxing Officer be set aside and taxed afresh.
 7. In opposition to the Applicant's Chamber Summons Application, Kennedy Oduor Advocate swore a Replying Affidavit on 4th October 2024 on behalf of the Respondent herein. The same was filed on even date.
 8. Through the said advocate, the Respondent averred that the said application herein was bad in law, incompetent, incurably defective, frivolous, vexatious, an afterthought and was merely intended to annoy and waste court's time. She added that the said application and the attached affidavit were full of untruths and misrepresentations in the model and manner that the suit was conducted, thus, should be dismissed with costs.
 9. She stated that vide a Plaint filed on 22nd March 2019, she filed suit following a road traffic accident that occurred on 25th November 2018. She averred that the suit proceeded for full trial with the participation of both parties and subsequently Judgment was delivered on 13th June 2024. She pointed out that the Applicant was granted thirty (30) days stay of execution.
 10. She further averred that upon delivery of Judgment, she filed her Bill for assessment in court on 14th June 2014 and the same was fixed for assessment on 30th July 2024. She stated that although the Applicant's counsel was served with the assessment notice, she failed to file a response or attend court to oppose her said Bill of Costs.
 11. She asserted that the Applicant and his counsel were aware of the Ruling on costs in this matter from 30th July 2024 but opted to be indolent for three (3) months and only woke up into activity when the auctioneers served the Applicant with proclamation notices. She pointed out that ever since Judgment was delivered and the Ruling on the Bill of Costs issued, the Applicant had not bothered to pay the decretal sums as decreed by court, or move the court at the earliest opportunity possible to set aside the said Ruling on costs or pay the portion of costs as he pursued his Reference herein or showed that the award of the Taxing Officer was based on an error of principle or that the award was manifestly excessive as to justify an influence that it was based on the error of principle.
 12. She was emphatic that the Applicant was an indolent party who had filed an equitable (sic) application after a long delay and failed to explain why he did not file his application within a reasonable time after the delivery of the Ruling on 13th June 2024. She added that he had approached the court with unclean hands as he had also failed to pay the Judgment sum on general damages to which no appeal had been preferred or a stay order issued thereon.
 13. She contended that he had litigated a fast track suit for five (5) years since 2019 to 2024 and wanted to continue litigating to frustrate and disenfranchise her so that she could give up on the fruits of her Judgment by ensuring that litigation did not come to an end.
 14. She further contended that he opted not to attend court on the date of assessment of the Bill of Costs with the hope of obtaining a default adjournment so as to frustrate the conclusion of this case. She added that the court record could attest to the number of times his counsel failed to attend court and the court would adjourn the case to accommodate her.
 15. She was categorical that he had not explained the reason for his refusal to attend court and argue his case, he had not particularised any item in the Bill of Costs that was excessive or pointed out what



would be reasonable figure payable in the Bill to enable the court see the merits of the Reference on the face of the application.

16. She pointed out that he had not requested the Taxing Officer for reasons for its assessment and had filed the Reference without knowing the reasons why the Taxing Master arrived at the said assessment. She added that he had also not shown the court any letter or notice that it had sent to court requesting the Taxing Officer for the reasons or grounds upon which the Bill of Costs was assessed.
17. It was her further contention that the Applicant had not taken out a Certificate of Costs to show this court the costs of Ruling upon which his Reference was based. She argued that he had the responsibility to show interest in his case and could not blame the mistake of his counsel for delaying to file the Reference herein. To buttress her point, she placed reliance on the case of *Edney Adaka Ismail v Equity Bank Limited*[2014]eKLR where it was held that the mistake of counsel was no longer a plausible reason for laches.
18. She further relied on the case of *Northwood Service Ltd v Mac & More Solution Ltd*[2015]eKLR where it was held that the right of appeal had to be balanced against an equally weighty right of the plaintiff to enjoy the fruits of the judgment delivered in his favour and that there must be a just cause for depriving the plaintiff of that right.
19. She was emphatic that in the circumstances, it would be unfair, inequitable and unjust to grant the Applicant orders sought as no reasonable and/or justifiable course had been presented before the court to justify the grant of the orders sought. She thus urged the court to dismiss the Reference herein with costs.
20. Both parties did not file Written Submissions herein. This Ruling is therefore based on parties' affidavit evidence only.

Legal Analysis

21. Paragraph 11 of the Advocates Remuneration Order sets out a detailed process of objection to taxation of costs. It states 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. 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 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."
22. This court took judicial notice that taxing officers normally gave the reasons in their decisions for taxation. These self-contained decisions obviated the necessity to furnish fresh reasons when they were



- sought for. However, where a taxing officer had not given reasons in his or her decision, he or she was obligated to furnish the same to the party who had requested for the same. Where a taxing master had failed to provide reasons, an aggrieved party could file still a reference for determination by the judge.
23. Indeed, as was held by the Court of Appeal in the case of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, absence of such reasons did not in itself preclude the objector from filing a competent reference (emphasis court).
 24. Notably, the Applicant did not annex a copy of the Ruling dated 30th July 2024 to his Reference. He annexed his letter to the Executive Officer Vihiga Law Courts dated 6th August 2024 to his Supporting Affidavit, which he said was his Notice of Objection in writing to the Taxing Officer of the items of taxation to which he objected. He also sought for the reasons for the Taxing Officer's decision. This was within the stipulated time of fourteen (14) days stipulated under Paragraph 11(1) of the Advocates Remuneration Order.
 25. However, the Applicant did not annex a certified copy of the said Ruling as he stated that despite having requested for the same in his letter dated 6th August 2024, he had not received it. He also did not annex the Respondent's said Bill of Costs dated 14th June 2024.
 26. As the decision of the Taxing Officer was not placed before this court, it could not with certainty confirm if the said decision contained reasons. Further, as the Applicant did not set out in the said letter the items in the Respondents Bill of Costs that he was objecting to, it was difficult for this court to ascertain if the Taxing Officer erred by allowing items that were not drawn to scale.
 27. Having said so, the failure by the Executive Officer Vihiga Law Courts to furnish the Applicant with the reasons as was requested in his advocate's letter dated 6th August 2024 was problematic as there were no Ruling or reasons upon which this court could determine the Applicant's reference. As this present Reference was incomplete, this court did not determine the same on merit.

Disposition

28. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Chamber Summons application dated and filed on 13th August 2024 be and is hereby struck out with costs to the Respondent herein.
29. It is hereby directed that the Applicant be furnished with the reasons and/or a copy of the Ruling dated 30th July 2024 forthwith to enable him file a competent application for consideration by the court.
30. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 16TH DAY OF SEPTEMBER 2025.

J. KAMAU

JUDGE

