



**Republic v Public Procurement Administrative Review Board & another;
Sports, Arts and Social Development (Exparte) (Application E063 of 2021)
[2023] KEHC 22514 (KLR) (Judicial Review) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E063 OF 2021
J NGAAH, J
SEPTEMBER 25, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD 1ST
RESPONDENT**

N.K. BROTHERS LIMITED 2ND RESPONDENT

AND

SPORTS, ARTS AND SOCIAL DEVELOPMENT EXPARTE

RULING

1 Before court is a reference by way of a chamber summons dated 15 May 2023 expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010 Section 1A, 1B and 3A of the *Civil Procedure Act*, Paragraph 11 (2) of the Advocates Remuneration Order. The prayers have been expressed as follows:

- a) That the Court be pleased to vacate and or set aside the decision of the Taxing Officer -Hon E. C Chelule dated 20th April, 2023 as it relates to items 1 and 2 of the bill of costs dated 16th December, 2022.
- b) That the Deputy Registrar be restrained by an order of this Honourable Court from issuing a certificate of costs and if one has been issued the same be expunged from the record.



- c) That this Court be pleased to remit the matter back for re-taxation before a different Taxing Officer.
- d) That in the alternative to prayer C above, this Honourable court be pleased to re-tax items 1 and 2 of the bill of costs dated 16th December, 2022 on the basis that the same is excessive and unsupported in law and facts.
- e) That the costs of this reference be provided for.”
- 2 The application is by the 2nd respondent/applicant and the record shows that the application was filed on 23 May 2023. It is supported by the affidavit of Rajesh D. Rathod who has introduced himself in that affidavit as the chief executive officer of the 2nd respondent/applicant.
- 3 According to this affidavit, a party and party bill of costs dated 16 December 2022 was taxed at Kshs. 6,815,382/= vide a ruling delivered by the taxing officer on 20 April 2023.
- 4 On 3 May 2023, the applicant’s advocate wrote to the deputy registrar requesting for the reasons for the taxation of the bill of costs so as to ascertain the rationale of the ruling. As at the time the applicant filed the instant application, no response had been received from the deputy registrar.
- 5 The deponent has been advised by his advocates, which advice he verily believes to be true, that in taxing item 1 on the bill of costs, the taxing officer proceeded on the wrong premise by increasing the minimum instruction fees of Kshs. 100,000/= by 50 times without any explanation or basis.
- 6 Also in taxing item 1 and 2 of the bill of costs, the taxing officer erred in law and in principle by departing from her own findings and failing to apply the same as a result of which her assessment of the costs payable was excessive. According to the applicant, the taxing officer’s findings were as follows:
- a. The suit was filed on 11 May 2021 and the judgement was delivered within 2 months on 21 June 2021. Thus the hearing of the matter was expeditious.
- b. No complexity was brought to attention and there were no voluminous documentation involved that required counsel to synthesise and prepare for hearing.
- c. The applicant did not demonstrate sufficient reasons to warrant increase of the instruction fees from the minimum Kshs. 100,000/= and therefore the matter was no different from any other judicial review proceedings.
- 7 Despite these findings, the taxing officer without any justification, increased the instruction fees by 50 times from the prescribed Kshs. 100,000/=.
- 8 Further, the applicant is advised by his counsel, which advice he verily believes to be true, that the taxing officer erred in principle and misdirected herself by awarding getting up fees under item 2 on the basis of the assessed instruction fees even after finding that the disposal of the matter was expeditious with no complexity as no preparations were needed for trial in light of the matters in issue and no extra level of diligence was required by counsel to prepare for trial.
- 9 Accordingly, the taxing officer failed to take into account her own reasons and findings hence awarding excessive and unrealistic amounts in items 1 and 2 of the bill of costs dated 16 December 2022.
- 10 Kevin Wakwaya, the learned counsel for the respondent, swore a replying affidavit opposing the application. He has confirmed that indeed a ruling was delivered on 20 April 2023 according to which the party to party bill of costs was taxed at Kshs. 6,812,382.



- 11 The ruling contained the reasons for the taxation and, therefore, it was not necessary for the applicant to write to the taxing master for written reasons for the decision. Considering that the ruling contained the reasons for the taxation under rule 11 (2) of the Advocates Remuneration Order, the applicant was required to file a reference within 14 days of the date of the ruling.

Applicant's submissions

- 12 In the submissions filed on its behalf, the applicant reiterated that the taxing officer departed from her own findings in respect of taxation of items 1 and 2 of the bill of costs dated 16 December 2022 and that the taxation of those items was excessive.

- 13 It was submitted that according to schedule VI (I) (j) of the Advocates Remuneration Order 2014, the taxing officer has the discretion to increase the instruction fees from the minimum 100,000/= but that that discretion is based on several factors including; the nature and importance of the cause or matter; the amount or value of the subject matter; the interest of the parties; and the general conduct of the parties. Other factors are the complexity of the issues raised and novel points of law; the time research and skill expended in the brief; and, the volume of the documents involved.

- 14 The taxing officer analysed all these factors and came to the following conclusion:

Bearing in mind all the aforesaid factors the results herein as well as the parties' submissions and in exercise of the discretion vested in me, I am fully convinced that the amount sought by the applicant is inordinately high and not commensurate to the amount of work employed by the counsel. The amount involved is not the sole determinant when it comes to cost. Judicial review suits are not money suits as they merely seek declaratory reliefs and orders. The suit was filed on 11th May, 2021 and judgement was entered within two months on 21st June, 2021. Having perused the file and looked at the volume of the documents therein I am not convinced that the applicant has demonstrated sufficient reasons as to convince me to increase the instruction fees from the minimum provided under the ARO to the amount sought... There is no specific complexity that has been drawn to my attention on any issue of novelty that had to be addressed in the said application different from any other judicial review proceedings."

- 15 The learned taxing officer then considered the decision in *Republic versus Nyeri County Government ex parte: Central Kenya Coffee Nill Limited* (2017) eKLR where the court held that the matter was not so complex and awarded instruction fees of Kshs. 150,000/= as reasonable fees based on awards in similar matters taking into account the principle that, in so far as is possible, there needs to be consistency in taxation of costs for judicial review matters.

- 16 It is submitted that the taxing officer contradicted herself when, after taking all the factors into account, and applying the law concluded that:

On the question of increase on the aforesaid basic fee and this being a party and party bill of costs, I am of the view that Kes. 5,000,000/- is reasonable instruction fee taking into account the time taken in this matter, the importance of the matter, the interest of the parties, the volume of the pleadings, scope of the work done and the source of the dispute herein as stated above."

- 17 The applicant relied on the decision in *Ngatia & Associates Advocates versus Interactive Gaming & Lotteries Limited* (2017) eKLR where it was held that the taxing officer mixed up issues when, she increased instruction fees from Kshs. 28,000/= to 1,00,000/= in a matter she considered not complex



- and after taking into account all relevant factors that would ordinarily influence the exercise of her discretion.
- 18 On the question of excessive taxation of items 1 and 2 of the bill of costs, the applicants have added that even if the taxing master found the matter to be complex, increasing the instruction fees from the minimum by fifty times is highly excessive and unreasonable. Once again, counsel for the applicant relied on the decision in *Ngatia & Associates Advocates versus Interactive Gaming & Lotteries Limited* (2017) eKLR where the case of *Danson Mutuku Muema versus Julius Muthoka Muema* HCCA No. 6 of 1991 was cited. In this latter case, it was held that while the court was entirely right to give the costs within its discretion, allowing the amount ten times more than that which is allowed was definitely excessive and unreasonable.
- 19 The applicants also relied of the case of *Brampton Investment Limited versus Attorney General & 2 Others* (2013) eKLR where the court cited the case of *Premchand Raichand Limited versus Quarry Services of East Africa Ltd*(no.3) (1972) EA and outlined the principles of taxation as follows:
- a. That costs should not be allowed to rise to a level as to confine access to justice to the wealthy.
 - b. That a successful litigant ought to be fairly reimbursed for the cost he has had to incur.
 - c. That the general level of remuneration of advocates must be such as to attract recruits to the profession and
 - d. so far as practicable there shall be consistency in the award made and,
 - e. the court will only interfere when the award of the taxing officer if is so high or so low as to amount to an injustice to one party.
- 20 The learned counsel for the applicant also cited the case of *Famy Care Limited versus Public Procurement Administrative Review Board & Another & 4 Others* (2013) eKLR where the court (Majanja, J.) held that although the taxing officer properly addressed herself on the principles governing taxation, she did not apply those principles to the facts and for this reason the taxation ought to be set aside and the bill of costs remitted back to a different taxing officer for re-taxation.
- 21 The applicant has urged that the taxing officer in this matter gave an excessive award of Kshs. 5 million as instruction fees without explaining how she took into account the various factors that led her to conclude that this sum was reasonable in the circumstances.
- 22 On item 2, on getting up fees, it was submitted that since it is premised on item 1, the instruction fees, the award of Kshs. 1,666,667 which is one third of the instruction fees as per schedule 6(2) be set aside because it was based on an erroneous award in item 1.
- 23 The final issue that the applicant addressed in its submissions is the question whether the application was filed out of time.
- 24 It was urged that it is settled law that any grievance emanating from a ruling on taxation can only be ventilated through paragraph 11 of the Advocates Remuneration Order. It is in paragraph 11 that the procedure to be followed by an aggrieved party is provided and it is the procedure which the applicant followed in filing the instant reference.
- 25 In particular, the applicant filed a notice of objection disputing items 1 and 2 on 3 May 2023 which was within the stipulated statutory timeframe of 14 days after the taxing officer's decision. The applicant did not receive any reply on the notice and, in the absence of such a reply, proceeded to file the instant application.



- 26 Accordingly, it is argued, the application before court is in compliance with the set out procedures of paragraph 11 of the Advocates Remuneration Order. If the application would be filed without notice of objection, the applicant has urged, it would be improper and irregular and in this regard the applicant relied on the case of *Aoro versus Were* (Miscellaneous Reference Application E0 19 Of 2022, apparently unreported.
- 27 It was further submitted that paragraph 11 does not provide for an exemption to the set out procedures and the applicant cannot be subjugated for following the due process.

Respondent's submissions

- 28 In response to the applicant's submissions, the respondent raised two issues for determination. The first is whether the instant tenant application should be dismissed because it was filed out of time and secondly, whether the decision of the taxing master should be vacated and set aside.
- 29 As far as the first issue is concerned, it was submitted that the application offends paragraph 11 of the Advocates Remuneration Order. According to that paragraph, it has been urged, it is a mandatory requirement for the applicant to file the application within 14 days of the date of delivery of the ruling on the taxation. On this submission, counsel relied on the case of *Nyakundi & Company Advocates v Kenyatta National Hospital Board* [2005] eKLR where it was held that under paragraph 11 (2) of the Advocates (Remuneration) Order, a definite time frame for filing a reference is given and that it is 14 days from the date of receipt of the reasons.
- 30 But where an objector delays in making his or her reference, they may apply for enlargement of time to make the reference under paragraph 11(4).
- 31 On the same question of timeliness within which an objection ought to be made and a reference filed, the learned counsel for the respondent relied on the case of *Singh Gitau Advocates v City Finance Bank Limited* [2021] eKLR
- 32 According to the respondent, the ruling rendered by the taxing officer in the instant case was detailed enough and, more importantly, contained reasons for taxation. It follows that there was no reason for the applicant's letter dated 3 May 2023, purporting to ask for reasons. When the applicant eventually filed the reference on 23 May 2023, it was outside the fourteen-day time limit.
- 33 On this question whether it was necessary for the applicant to ask for reasons, the respondent relied on the decision in *National Oil Corporation Ltd v Real Energy Ltd & Another* [2016] eKLR where it was held that "there is no magic in requiring the taxing officer to furnish reasons before making a reference. Where reasons are contained in the decision a party ought not to seek the same simply because it is fashionable to do so..."
- 34 Counsel also cited the decision in *Ahmed Nassir v National Bank of Kenya Ltd* [2006] 1 E.A. where it was held that:

Although Rule 11(1) of the *Advocates Remuneration Order* stipulates that any party who wishes to object to the decision of the Hon. Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of Sub-rule (2) of Rule 11 of the *Advocates Remuneration Order*



demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling”.

35 Two decisions which the respondent relied upon on the same point are *Evans Thiga Gaturu v Kenya Commercial Bank Limited* [2012] eKLR and *KCB Bank Limited & another v Yeswa Antony Joseph* [2022] eKLR. In the former decision the court held:

In most cases the court is aware that the taxing officers in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons thereafter. In such circumstances, it would be fool hardy to expect the taxing officer to redraft another “ruling” containing reasons.”

36 And in the latter decision it was held:

In the circumstances, taking into consideration the authorities cited above, I find that the reasons for the Taxing Master’s decision were contained in the decision. It follows that the applicants herein had no reason to delay the filing of this Reference and more so, in filing the same after the elapse of more than 14 days after the delivery of the same, contrary to the stipulations in Rule 11 of the Advocates Remuneration Order. Accordingly, the Reference as filed out of time without leave of court enlarging or extending time for filing of the same is incompetent...For reasons that the reference herein was filed out of time without leave of court in accordance with the provisions of paragraph 11 (4) of the Advocates Remuneration Order, I find and hold that it is incompetent and amenable for striking out. It is hereby struck out.”

37 Counsel also relied on *Lucas A. O. N. Ochieng v Judith Otieno Owiti; Kisumu Municipal Council (Third Party)* [2020] eKLR in support of the submission on the same point.

38 The reference having been filed 33 days after the ruling had been delivered and 20 days after the notice was issued, the application, according to the respondent, was filed outside the mandatory 14 days. And since the applicant has not sought for extension of time or leave to file the application out of time, the reference is not properly before court. Relying on the Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, it was submitted that extension of time is not a right of a party and any party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. In the instant case, no cogent reasons have been put forth by the applicant for the delay in filing the reference. Accordingly, the application before this court is said to be incompetent, misconceived, bad in law and abuse of the court process and ought to be dismissed with costs.

39 On the question whether the amount awarded on the heads of instruction fees and getting up fees were excessive, it was urged that, assuming the reference was properly before court, the applicant has failed to demonstrate how the taxing master erred in principle. Neither has the applicant demonstrated sufficient and proper grounds to impugn the exercise of the judicial discretion by the taxing master to warrant interference by this Honorable Court.

40 The learned counsel for the respondent cited the decision in the matter of *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] eKLR where it was held that the court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.



41 The learned counsel, however, agreed with the applicant that some of the factors to consider in exercise of discretion by the taxing master include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial Judge. Nevertheless, not all the factors may exist in any given case and, therefore, it is open to the taxing officer to consider only such factors as are necessary in any particular case.

42 It was submitted that the taxing master has discretion to enhance the instruction fees in accordance with the Advocates Remuneration Order. In the instant case, the taxing officer demonstrated that she had exercised her discretionary powers and enhanced the instruction fees with reasons. In particular, the learned magistrate had explained herself as follows:

Advocates should be fairly, appropriately and justly rewarded for their fees bearing in mind the skill they exercised. This should not however be used as a way to punish the opposing party but should seek to fairly compensate the advocate for the time and industry employed in the matter.”

43 This exercise of discretion, it was urged, is covered by Schedule VI(I)(J) of the *Advocates Remuneration (Amendment)* (No. 2) Order 2014. In support of this submission the learned counsel for the respondent relied on *University of Nairobi & another v Moses* (Civil Appeal 119 of 2020) [2022] KECA 45 (KLR) where it was reiterated that the taxing master has the discretion to increase the minimum amount after taking into consideration the nature and importance of the cause or matter, the amounts or value of the subject matter, the interest of the parties, the general conduct of the parties, the complexity of the issues raised and novelty of points of law involved, the time taken in the disposal of the matter, research and skills expounded in the brief and lastly, the volume of documents involved.

44 On the applicant’s submission that the amount awarded is excessive, the respondent’s answer is that the applicant has not provided any reasonable grounds to demonstrate that the sum awarded was inordinately high. It is submitted that the amount awarded cannot be said to excessive merely because the suit is a judicial review. On this submission, counsel relied on *Republic v Cabinet Secretary, Internal Security & 2 others; Federation of Kenya Employers & another (Interested Parties) Ex parte Gragory Oriaro Nyauchi* [2019] eKLR where the Court of Appeal held that the taxing officer rightly found the applicable basic instruction fee as Kshs 100,000/=. Considering that the judicial review proceedings were opposed and defended by the interested party, and also that she considered the importance of the subject matter and the proceedings to the Kenyan public, she properly exercised her discretion in increasing the instruction fees to Kshs. 1,000,000/=. The amount was considered not excessive in the circumstances. Also cited in support of the same argument were the cases of *Direct Line Assurance Company Limited v Hamilton Harrison & Mathews Advocates* (Miscellaneous Civil Application E1003 of 2020) [2021] KEHC 259 (KLR) and *Ochieng, Onyango, Kibet and Ohaga Advocates v Adopt Light Limited* [2007] eKLR. In the latter decision, it was held, inter alia:

...The taxing master must consider the case and the labour required in the matter, the nature or importance of the matter more so the amount or value of the subject matter involved, the interest of the client in sustaining or losing a brief and the complexity of the dispute. In assessing an amount commensurate to the work undertaken, it is of fundamental importance to consider the value of the subject... And when the subject matter is unknown, the court is empowered to make what is available as a point of reference.”

45 In conclusion, the respondent prayed that the reference be dismissed with costs.



Analysis and determination

- 46 One of the questions that have been raised and which I ought to determine at the very outset is whether the applicant's reference is properly before court. This question has been provoked by the undisputed fact that the reference was filed outside the timeline prescribed by paragraph 11 (2) of the *Advocates Remuneration Order*, 2014.
- 47 Even then, the applicant insists that it strictly complied with paragraph 11 of the *Remuneration Order*.
- 48 To be precise, it has been urged, on the applicant's behalf, that the objection to the taxation was filed on 3 May 2023 well within the timeline of 14 days from the date of the impugned ruling. Since the applicant did not receive any reply, it proceeded to file the instant application. On the particular question whether the applicant would have filed the reference without the objection having been filed first, the applicant has urged that the reference would have been irregular. Again, the applicant argues that there are no exceptions to the prescribed procedure in paragraph 11 of the *Remuneration Order*. In other words, an applicant must comply, to the letter, and follow all the procedures laid down in paragraph 11 of the *Remuneration Order*.
- 49 Paragraph 11(1) of the *Advocate Remuneration Order* provides room to a party who is dissatisfied with the decision of a taxing officer to object to that decision. The objection must specify the particular items to which an aggrieved party objects and where such an objection has to be taken, it must be done within 14 days of the date of the taxing officer's decision. This paragraph reads as follows:
1. should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of the taxation to which he objects.
- 50 Paragraph 11(2), on the other hand, enjoins the taxing officer to respond to the objection and, in his response, give reasons why and how he came to tax the disputed items the way he did. Once he receives the reasons, the objector will have fourteen days within which to file a reference to a judge in chambers. This subparagraph reads as follows:
- (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 14 days from the receipt of the reasons apply to a judge by a chamber summons which shall be served on all the parties concerned setting out the grounds of his objection.
- 51 In consideration of the question whether an objection has, in every case, to precede a reference to challenge a taxation of a bill of costs decision, it is necessary and, indeed, they are better understood if subparagraphs (1) and (2) of paragraph 11 are read together.
- 52 What emerges from these subparagraphs is that there is nothing untoward when taxing officer taxes a bill without giving any reasons on why and how he taxed the entire bill or any items thereof in the manner he did. He may, for instance, say "the amount taxed on item 1 is such and such amount" without saying anything further. It is in such a case that a party who is aggrieved by the taxation will file an objection against the taxation and thereby enjoin the taxing master to go further and give his reasons for taxation.
- 53 It is also apparent from these two subparagraphs that the grounds upon which a reference can be mounted would, ordinarily, arise from the reasons proffered by the taxing master for his decision. Dissatisfaction with the taxation per se is not necessarily a ground to file a reference. It is after reasons for taxation have been given that an aggrieved party may found a cause for the reference.



- 54 What this implies is that it is possible that a party may not be satisfied with the taxation of any particular item or items in the bill of costs. But his doubts on the validity of the taxation may be removed after the taxing master has explained himself and given reasons for taxing the disputed items in which event it will not be necessary to proceed any further and file a reference or chamber summons challenging the decision of the taxing master. He will only take this step if he is not satisfied with the explanation or the reasons given by the taxing master.
- 55 It follows that where reasons for taxation of the bill or any particular items are given in the decision of the taxing master, the objection serves no other purpose than, perhaps, informing the taxing master that a party to proceedings before him is dissatisfied with his taxation. But such information may not serve any useful purpose since the taxing master is not required to take any further action on an objection that may be served upon him after he has already given reasons for his decision. Lodging of the notice of objection, in these circumstances, would be superfluous, to say the least.
- 56 The point is, to interpret paragraph 11 (2) as requiring the taxing master to give reasons that are already contained in his decision on taxation is, in my humble view, an absurdity.
- 57 Nonetheless, if for whatever it is worth, the applicant feels bound to serve the objection in compliance with paragraph 11(2), nothing stops him from doing so. However, it would be irrational on his part for him to sit pretty, after service of the objection, waiting for the taxing master to respond to the objection and give reasons that have otherwise been given in the taxing master's decision. The clock for filing the reference starts ticking the moment the applicant receives the reasons.
- 58 I am unable to agree with the applicant that a reference would be rendered incompetent merely because it is not preceded by an objection even in a case where the taxing master has given reasons in the initial decision on the taxation in issue.
- 59 As I have noted, the reasons are necessary, in part, to challenge the taxation and where they have been given, nothing stands in the way of an aggrieved party to mount a challenge against the decision of the taxing master. In which event, I have to repeat, time starts running the moment the reasons are received irrespective of whether they are given in the initial taxation decision or after an objection to the taxation has been lodged.
- 60 Turning back to the applicant's case, the ruling of the taxing master was rendered on 20 April 2022 and, apparently, it is on the same date that the applicant received it. At least there is nothing in its pleadings or affidavit to suggest that they it received this ruling on a later date.
- 61 A notice objecting to the taxation was filed on 3 May 2023 which was just in time of the 14-day period within which it ought to have been filed. The notice reads in part:
- Take notice that the 2nd respondent/applicant objects to your decision on taxation delivered on 20th April, 2023 in respect to the party and party bill of costs dated 16th December, 2022.
- The applicant shall be objecting to items 1 and 2 of the bill of costs dated 16th December 2022 assessed at Kes. 5,000,000/- and kes. 1,666,667/- respectively.
- Further record and forward forthwith the reasons for your decision on taxation of the said items for purposes of complying with paragraph 11 (2) of the Advocates Remuneration Order.”
- 62 But it is apparent from the taxing master's ruling that the reasons for taxation of the disputed items, amongst other items, were contained in the ruling. As a matter of fact, the ruling was captioned “ruling and reasons for taxation on the party and party bill of costs dated 16th December 2022”.



- 63 The purpose for which the notice to object was required under paragraph 11(1) had been served by the ruling. The reasons for the taxation of the disputed items had been given, and, as matter of fact, the applicant has extensively referred to those reasons in its pleadings, affidavit and submissions.
- 64 It is also apparent from the ruling that the taxing master explained and gave reasons for taxation on item 1 in the bill of costs. She made reference to schedule VI(I)(j) of the *Advocates Remuneration (Amendment) Order*, 2014 and cited several decisions which, in her learned view, supported the decision she came to in respect of taxation of this particular item. She explained in that ruling how she taxed item 2 in the same breath with particular reference to schedule VI of the *Advocates Remuneration Order*.
- 65 Even then, assuming there was any need to ask for reasons for taxation, it was not until 23 May 2023 that the applicant filed the present reference.
- 66 The reasons for taxation, as noted were given on 20 April 2023. It follows that the reference was filed outside the 14-day limit, a fact that the applicant does not dispute.
- 67 Where, for any reason, an applicant has to file a reference outside the prescribed time, he can only do so upon invoking subparagraph (4) of paragraph 11 which gives the court power to enlarge time for doing any act under subparagraph (1) and (2).
- 68 That subparagraph reads as follows:
- (4) the High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) of 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 sought time may have already expired.
- 69 Even if it was to be assumed that the applicant is right that the taxing master did not respond to its notice issued under subparagraph (1), or that no reasons were given for the taxation of the disputed items after issue of the notice, the applicant was not entitled to file a reference without first seeking extension of time. I suppose it is in the context of the application to extend time that it would have possibly urged that they did not obtain the reasons for taxation in time or at all.
- 70 But it has been noted earlier that the reasons had been given and, therefore, that argument would not have been of much help to the applicant.
- 71 In the final analysis, I find the applicant's reference to be incompetent.
- 72 And since there is no proper reference before court I need not consider it on merits and delve into other matters raised by the parties. The applicant's chamber summons dated 15 May 2023 is hereby struck out with costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 25 SEPTEMBER 2023

NGAAH JAIRUS

JUDGE

