



Wendano Matuu Company Limited v Muli & 2 others (Environment & Land Case 31 of 2020) [2025] KEELC 4678 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4678 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 31 OF 2020**

**AY KOROSS, J
JUNE 24, 2025**

BETWEEN

WENDANO MATUU COMPANY LIMITED PLAINTIFF

AND

STEPHEN NDAMBUKI MULI 1ST DEFENDANT

CANNO ALUMINIUM FABRICATORS LIMITED 2ND DEFENDANT

WAMBUA & MASENO LLP ADVOCATES 3RD DEFENDANT

RULING

1. This ruling seeks to determine the chamber summons dated 14/12/2023 filed by the 2nd defendant, whereby in moving the court under Order 11 of the Advocates (Remuneration) Order, has sought the following reliefs:
 - a. That the ruling on the taxation dated 6/12/2023 with regard to the 2nd defendant's amended party and party bill of costs dated 5/09/2023 be set aside and the matter be remitted for re-taxation.
 - b. The costs of the summons be in the cause.
2. The motion is supported by the grounds set out in the body thereof and reiterated in the supporting affidavit of Parbat Dhanji Lalji deposed on 14/12/2023.
3. In the summary of both, he stated a) the taxing officer, without giving any reasons as to how the figure was arrived at, taxed instruction fees at ksh. 125,000/- instead of ksh. 2,423,000 as proposed by the 2nd defendant, yet the suit property was valued at kshs. 80,750,000/=, b) the taxing officer taxed off the getting up fee of kshs. 807,666.67/= without giving reasons; and, c) the figure of ksh. 2,423,000/= had been confirmed in Machakos ELC Misc. E014 of 2022 and adopted by the court, and lastly, d) the taxing officer failed to consider the value of the subject matter.



4. The summons was strenuously opposed by the replying affidavit of Stephen Ndambuki Muli for the plaintiff, which he swore on 26/01/2024. In brief, he asserted inter alia, a) the taxed costs of kshs. 150,161/= was proper, b) the summons had failed to particularise the principles and/or law that the taxing officer misdirected herself upon in the assessment of the costs; and
5. C)The impugned ruling gave the reasons for taxing the specific items, including instruction fees, d) the 2nd defendant had failed to tender evidence showing the taxing officer applied the wrong principles of the law or made an error to warrant interference with the impugned ruling, e) in arriving at the instruction fee figure of kshs. 125,000/-, the taxing officer considered the nature of the pleadings, the responsibility entrusted upon the counsel and the time and research involved.
6. F) The matter was not complex and did not take off for hearing, f) the getting up fees or fees for preparing for trial which is provided for in Schedule 6 of the Advocates Remuneration Order, 2014 never arose in this case as the matter never came up for pretrial directions as the suit was withdrawn, and in the end g) this court usually exercises judicious discretion in setting aside taxation proceedings.
7. The court directed the parties to file written submissions, and in compliance, the law firms of M/s. Ondabu & Co. Advocates for the 2nd defendant and M. M. Kitonga Advocates LLP for the plaintiff filed their respective submissions dated 14/02/2025 and 18/02/2025, and this court is indebted to counsels for their well-articulated submissions.
8. Therefore, upon identifying and considering the issues for determination, this ruling shall, later on in its analysis and determination, consider the arguments contained in the submissions on the particular issue and also bear in mind the law and judicial precedents relied upon to advance the arguments.
9. This court, having carefully considered the summons, its grounds, affidavits, the rival submissions and the relevant legal and jurisprudential framework, considers the following issues, which shall be handled separately, arise for analysis and determination.
 - a. Whether the summons is filed prematurely.
 - b. Whether this court should set aside the decision of the taxing officer.

a. Whether the summons is filed prematurely.

10. It is unfortunate that none of the parties addressed this issue in their documents; nevertheless, this court will address its mind on it. It is worth noting that once a bill of costs has been taxed off by a taxing officer, and if aggrieved by the decision, an applicant in this case, the 2nd defendant, is usually guided by Order 11 of the Advocates (Remuneration) Order. This provision of law provides an elaborate procedure by stating thus: -

“(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) far 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.”

11. This court’s understanding on reading Order 11 (1) of the Advocates (Remuneration) Order is that the filing of a notice of objection on items of taxation is a mandatory pre-emptive step, which an aggrieved party ought to adhere to by filing it at least within 14 days from when the ruling is rendered.
12. Once this hurdle is met, then the 2nd defendant, as the aggrieved party, has the green light to move to the next stage, which is obtaining reasons as envisaged by Order 11 (2) of the Advocates (Remuneration) Order. However, being guided by the persuasive decisions of Ahmednasir Abdikadir & Co. Advocates vs. National Bank of Kenya Limited (2) [2006] 1 EA 5 and Evans Thiga Gaturu, Advocate V Kenya Commercial Bank Limited [2012] Kech 4274 (Klr), if the 2nd defendant considers the ruling of the taxing officer contained sufficient reasons, it could file the reference within 14 days from the date thereof.
13. Still, if it was of the view that the ruling did not contain sufficient reasons or did not contain any reasons whatsoever, then it could, in writing, ask for further reasons or reasons as the case may be, but must file the reference within 14 days upon such receipt.
14. Having painstakingly considered the summons that is before this court, there is no evidence whatsoever that the 2nd defendant ever issued a notice in writing to the taxing officer of the items of taxation to which it objects as required by Order 11 (1) of the Advocates (Remuneration) Order. In other words, the 2nd defendant skipped an essential step, as no objection was ever raised with the taxing officer.
15. In consequence of the misstep, this court finds the 2nd defendant acted prematurely and pre-empted the lodging of an objection, and in the absence of the notice of objection to the taxed items, which is a grave omission, this court finds the reference herein is incompetent, null and void ab initio.
16. Having found the summons incompetent, this court deems it unnecessary to address issue (b) and hereby strikes out the chamber summons dated 14/12/2023 with no orders as to costs. This file is hereby effectively marked as closed.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 24TH DAY OF JUNE, 2025.

HON. A. Y. KOROSS

JUDGE

06.2025

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In the presence of;

Mr. Omagwa holding brief for Mr. Ondabu for 2nd defendant.

Miss. Mulyungi holding brief for Mr. Gitonga for plaintiff.

Ms. Kanja- Court Assistant.

