



**JA Guserwa & Company Advocates v Opiayo (Miscellaneous Application  
E092 of 2023) [2025] KEELRC 2430 (KLR) (15 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2430 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E092 OF 2023  
BOM MANANI, J  
SEPTEMBER 15, 2025**

**BETWEEN**

**JA GUSERWA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**EDWARD O OPIAYO ..... RESPONDENT**

**RULING**

**Background**

1. The Applicant filed the Advocate-Client Bill of Costs dated 16<sup>th</sup> March 2023 against the Respondent. The Bill was subsequently taxed on 6<sup>th</sup> December 2024 at Ksh. 972,094.85. Being dissatisfied with the taxation order, the Applicant filed the instant reference to challenge it.
2. It is the Applicant's case that the amount which the Taxing Master awarded as instructions and getting up fees are too low and were assessed contrary to the provisions of law. As such, the Applicant contends that the Taxing Master committed an error of principle in awarding the impugned sum.
3. The Respondent has opposed the reference. He filed grounds of objection which inter alia, assert that the reference is bad in law as it was filed out of time without leave of the court.
4. The court record shows that the taxation ruling was delivered on 6<sup>th</sup> December 2024. On 9<sup>th</sup> December 2024, the Applicant wrote to the court expressing her objection to the taxation order and calling for reasons for the low award.
5. It appears that the court did not respond to the Applicant's request for reasons for the ruling. Nevertheless, the Applicant proceeded to file the reference on 27<sup>th</sup> March 2025, more than three months from the date the taxation ruling was delivered.



## Analysis

6. Rule 11 of the [Advocates \(Remuneration\) Order](#) provides as follows: -
- i. 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.
  - ii. 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.
  - iii. 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.
  - iv. 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.
7. This provision requires a party who is aggrieved by a taxation order to seek reasons for the decision within 14 days of delivery of the ruling. The party should then file a reference against the taxation order within 14 days of receipt of the reasons for the decision from the Taxing Master.
8. So when does time start running for purposes of filing a reference? A series of decisions indicate that where the reasons for the decision of the Taxing Master are apparent in the decision, the Taxing Master need not write to the parties separately to give reasons for his/her decision. As such, the 14 days period for filing a reference against the taxation order start to run from the date the taxation ruling is delivered (see for instance [Republic v Public Procurement Administrative Review Board & another; Sports, Arts and Social Development \(Exparte\) \(Application E063 of 2021\) \[2023\] KEHC 22514 \(KLR\) \(Judicial Review\) \(25 September 2023\) \(Ruling\)](#)).
9. If the applicant does not file the reference within the 14 days window provided for in law, he must seek leave of the court to file it (the reference) out of time. He is not entitled to simply present the reference to court without more.
10. This reality was spoken to in the case of [Republic v Public Procurement Administrative Review Board & another; Sports, Arts and Social Development \(Exparte\) \(Application E063 of 2021\) \[2023\] KEHC 22514 \(KLR\) \(Judicial Review\) \(25 September 2023\) \(Ruling\)](#) when the learned Judge expressed himself on the subject as follows:-

“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.”



11. In the instant application, it is apparent that the taxation ruling was delivered on 6<sup>th</sup> December 2024. Therefore, the Applicant was expected to have filed the reference within 14 days of receipt of the reasons for the ruling from the Taxing Master.
12. A perusal of the ruling dated 6<sup>th</sup> December 2024 demonstrates that it is sufficiently detailed. The Taxing Master cited the provisions of law that guided his decision and set out the formula he applied to arrive at the impugned figure on instructions and getting up fees.
13. In my view therefore, the reasons for the decision are self-evident in the decision. As such, the Taxing Master was not obligated to furnish the Applicant with a separate note setting out the reasons for his ruling.
14. That being the case, the Applicant was obligated to file the reference within 14 days from 6<sup>th</sup> December 2024, that is to say, by close of business on 20<sup>th</sup> December 2024. However and as the court record shows, the reference was presented to court on 27<sup>th</sup> March 2025, well outside the prescribed timelines.
15. There is no evidence that the Applicant sought leave of the court to enlarge time for filing the reference out of time. As such, the reference was filed outside time without leave of the court.

### **Determination**

16. The upshot is that the court finds that the instant reference was filed outside the prescribed timelines without leave of the court.
17. As such, it is time barred.
18. Consequently, it is dismissed for this reason.
19. Each party to bear own costs.

**DATED, SIGNED AND DELIVERED ON THE 15<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

