



**Hussein Builders Limited v Oceanic Towers Limited (Environment and Land Case 110 of 2018) [2025] KEELC 6177 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6177 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 110 OF 2018  
YM ANGIMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**HUSSEIN BUILDERS LIMITED ..... PLAINTIFF**

**AND**

**OCEANIC TOWERS LIMITED ..... DEFENDANT**

**RULING**

1. By a notice of motion dated 28.02.2025 filed pursuant to Section 1A, 1B and 3A of the [Civil Procedure Act](#) (Cap 21) and paragraph 11(2) of the Advocates Remuneration Order the defendant sought the following orders;
  - a. Spent.
  - b. This Court be pleased to enlarge time for the Client/Respondent to file a Reference to this Court under Rule 11 (2) of the Advocates Remuneration Order against the ruling delivered on 4.12.2024 by the Honourable Christopher Yalwala, Deputy Registrar on taxation of the Party and Party Bill of Costs dated 27.8.2024.
  - c. The Ruling delivered by the Honourable Christopher Yalwala, Deputy Registrar on taxation of the Party and Party Bill of Costs dated 27.8.2024 be set aside in its entirety.
  - d. The Court be pleased to set aside the determination of the value of the subject matter, instruction fees and getting up fees in items 2 and 3 on page I and 2 of the Ruling dated 12.2024 determining the value of the subject matter as Kshs. 22,000,000.00, assessing instruction fees at Kshs. 530,000.00 and getting up fees at Kshs. 176,66.70.



- e. This court be pleased to remit the bill with specific guidelines to a different Deputy Registrar on principles applicable under the remuneration order to determine the value of the pleadings matter where the value of the subject matter cannot be ascertained from the pleadings.
  - f. The costs of this application be paid by the plaintiff
2. The application was based upon the grounds set out on the face of the motion and the contents of the brief supporting affidavit sworn by Mitech Visaria on 28.02.2025. The gist of the application was that the defendant was aggrieved by the decision of the taxing officer dated 24.12.2024 by which he taxed and allowed the plaintiffs bill of costs dated 27.08.2024 in the sum of Kshs.776,035/-. As such, the defendant wanted leave of court to file a reference out of time and to have the said taxation set aside as it considered the same to be erroneous.
3. The reason for the defendant's default in filing the reference within the prescribed period was given in paragraph 5 of the supporting affidavit as follows;

“The reference could not be filed earlier as the Deputy Registrar had not communicated his reasons in his said ruling and our advocates had not received instructions to file this reference to challenge the said taxation until today 28.02.2025 from me as I have been attending to an elderly and sickly father.”
4. The plaintiff filed a replying affidavit sworn by Sajjad Hussein Moosajee on 10.04.2025 in opposition to the application on several grounds. First, that the defendant had failed to file its submission on the plaintiff's bill of costs despite being accorded an opportunity to do so. Second, the defendant had failed to give a written objection to the taxing officer's decision as required under paragraph 11(1) of the Advocates Remuneration Order. Third, there was no evidence that the defendant's director was away or unavailable to give instructions to its advocates.
5. When the application was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. The record shows that the plaintiff filed its submission on 25.05.2025 but the defendant's submissions were not on record by the time of preparation of the ruling.
6. The court has considered the material and submissions on record. The court is of the view that there are three main issues for determination herein. First, whether the defendant has made out a case for extension of time to file a reference out of time. Second, whether the defendant's intended reference has merit. Third, who shall bear costs of the application.
7. The court had considered the material and submissions on record on the first issue. The court is aware that it has a wide discretion to grant an extension of time. However, it is well settled that such discretion must be exercised judicially and upon reason. It cannot be exercised capriciously and upon whim or sympathy. The applicant for extension of time must lay a reasonable and genuine basis for the exercise of such discretion in his favour.
8. The court has noted that the decision of the taxing officer was made on 04.12.2024 whereas the application was filed 11.03.2025 (although dated 28.2.2025). The only explanation for the delay given by the defendant is contained in paragraph 5 of the defendant's supporting affidavit.
9. The first limb of the explanation blames the taxing officer for failing to communicate the reasons for the decision on time. However, the material in the court file and the Case Tracking System(CTS) indicates that on 04.12.2024 the defendant's advocate applied for reasons for the taxation orally whereupon



the taxing officer directed that a copy of the ruling containing the reasons for taxation be posted on the CTS. A visit to the system indicates that indeed the ruling was posted on 05.12.2024. It cannot, therefore, be true as alleged by the defendant that the taxing officer was responsible for its default in taking the requisite steps to file a reference within the stipulated time.

10. The second limb of the explanation claimed that the defendant's director was attending to an elderly and sickly father hence he could not give instructions to the concerned advocates to file a reference until 11.03.2025. The court is unable to find any reasonable or plausible explanation here. Firstly, the record shows that as far back 04.12.2024 when the taxing officer made the impugned decision the defendant's advocates requested for 30 days stay to enable them to file a reference against the taxation. It has not been explained how and when those instructions subsequently disappeared. Secondly, there is absolutely no evidence on record to demonstrate that all the directors or officials of the defendant were attending to a sick person and for how long they were engaged in that exercise.
11. The court takes the view that the defendant has really no good explanation for the delay in filing its intended reference within the stipulated period. It has instead sought to fabricate reasons by shifting blame to the taxing officer and the father of one of the directors. The court takes the view that the application was not filed in good faith and that it was merely filed as an afterthought to delay payment of costs.
12. In view of the court's finding and holding on the first issue it is not necessary for the court to determine the second issue on the merits of the reference. Even if the court were to venture into the merits of the reference, it is obvious from the material on record that the defendant cannot possibly mount a competent reference. This is due to the defendant's failure to comply with the express provisions of paragraph 11 (1) of the Advocates Remuneration Order. There is no evidence in either the court file or the CTS to show that the defendant issued the requisite notice to the taxing officer. The court fully agrees with the authority of *Muiruri & Wachira Advocates vs Nicola Farms Limited* [2021] eKLR which was cited by the plaintiff.
13. In the said case it was held, inter alia, that;
  - “ 54. In my humble view, the conduct of the client herein of switching positions and goal posts, from one point to the other, is meant to defraud the cause of justice, and cannot be dignified with exercise of equitable discretion in favor of such a client/litigant.
  55. Notwithstanding the foregoing, I must also point out that a Reference can only be filed if a valid and proper Notice of Objection to taxation was filed and/or lodged in line with Rule 11(1) of the Advocates Remuneration Order and not otherwise.
  56. However, in respect of the subject matter, I found and held that no valid Notice of objection to taxation had been filed and/or lodged. See the ruling rendered on the 14<sup>th</sup> October 2021, which has not been set aside.
  57. In the absence of a valid Notice of objection to taxation, which is the sine quo non to the filing of a Reference, can a valid reference be filed?
  58. In the alternative, can time be extended for the filing of a Reference, where the requisite foundation does not exist, either in the manner sought for by the client herein or at all.



59. My short answer to the questions contained in the two preceding paragraphs is in the negative. Without an appropriate Notice of objection to taxation, any intended Reference, would be still borne and otherwise a nullity.”

14. The third issue is on costs. It is well settled that costs of an action or proceeding shall follow the event as stipulated under Section 27 of the *Civil Procedure Act*. There is no good reason why the successful litigant should not be awarded costs of the application. As such, the plaintiff shall be awarded costs of the application.

15. The upshot of the foregoing is that the court finds no merit in the defendant’s instant application. As a consequence, the notice of motion dated 28.02.2025 and filed on 11.03.2025 is hereby dismissed in its entirety with costs to the plaintiff.

It is so ordered.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Court assistant Gillian

Mr. Otieno for the plaintiff

Mr. Muthuri for the defendant

