



REPUBLIC OF KENYA



**Mugacha v Mugacha (Miscellaneous Reference Application
E052 of 2022) [2025] KEELC 6330 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6330 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS REFERENCE APPLICATION E052 OF 2022**

**JM ONYANGO, J
SEPTEMBER 24, 2025**

BETWEEN

STANLEY THAARA MUGACHA APPLICANT

AND

PETER KINUTHIA MUGACHA RESPONDENT

RULING

1. The Applicant filed a Reference vide a Chamber Summons Application dated 1st August, 2022, seeking the following orders:-
 - a. That the Application dated 1st August 2022 be certified as urgent and be heard during the court vacation.
 - b. That this honourable court do be pleased to grant stay of execution of the Ruling of Honourable J.Orwa of 1st July 2022 in Senior Principal Magistrate's Court at Kikuyu ELC Case No. E20 of 2021 pending hearing and determination of the Chamber Summons Application herein.
 - c. That the cost of this application be provided for.
2. The Reference is based on the grounds listed on the face of the Application and on the Applicant's Supporting Affidavit sworn by him on the same date. The Applicant deponed that a formal request for the ruling and/or reasons for taxation was made vide a letter dated 14th July 2022, but the same was yet to be availed at the time of filing the Application.
3. The Applicant asserted that he was dissatisfied with the ruling of the learned Taxing Officer, and he maintained that the said Officer misdirected herself in law and arrived at a decision that was untenable and contrary to legal principles. He reiterated that despite formally requesting the ruling and/or reasons for taxation, none have been supplied as at the time of filing the Application.



4. It was his position that the Taxing Officer exceeded her mandate by assuming the role of the client, and her conduct displayed elements of bias and unfairness.
5. He asserted that, unless the stay of execution was granted, he stood to suffer irreparable harm and prejudice, as the Reference would be rendered nugatory. He contended that the orders sought were necessary in the interest of justice. In conclusion, he stated that this Application had been brought without any inordinate delay.
6. Peter Kinuthia Mugacha, the Respondent, opposed the Application through a Replying Affidavit sworn 16th March 2025. The Respondent deponed that the Application was an afterthought, misconceived, baseless, and merely intended to delay or deny him the fruits of the Judgment. He stated that the Applicant had already entered into an agreement with him regarding the decretal sum, in which the Respondent agreed to compensate the Applicant for part of the suit property at a sum of Kshs. 1,500,000. He explained that the amount payable was factored into the said price and the difference thereof paid to the Applicant and his assignees.
7. He further averred that, by his actions and conduct, the Applicant had led him to believe that the amount was not in dispute, and was therefore estopped from challenging the Taxing Master's decision.
8. He maintained that the Applicant had not advanced any cogent or substantive reason for the Reference, nor cited any provision of the Advocates' Remuneration Order or other law to justify the Application.
9. He deponed that the Bill of Costs dated 1st October 2021 had been properly and procedurally taxed in accordance with the established principles and guidelines. He added that the subject matter value had been determined at Kshs 24,000,000 based on a valuation report by Fidelity Valuers, which had been presented before the Taxing Master together with a receipt.
10. He explained that the instruction fees had further been reduced to 75% in line with Schedule 7(1) (b) and (c) since the matter had not proceeded to full hearing. In his view, the Applicant had not demonstrated any error on the part of the Taxing Master or any error of principle in the assessment of the instruction fees. He prayed that the court dismiss the application dated 1st August 2022 with costs.
11. The application was canvassed by way of written submissions.

Applicant's Submissions

12. In the Applicant's submissions dated 7th April 2025, Counsel identified two issues for determination: (i) whether the Taxing Officer erred in principle in assessing the instructions fees in Kikuyu Chief Magistrate ELC Case No. E020 of 2021: Stanley Thaara Mugacha & Another versus Peter Kinuthia Mugacha; and (ii) whether the Taxing Officer erred in principle in assessing the instruction fees in Kikuyu Chief Magistrates ELC Case No. E020 of 2021 Stanley Thaara Mugacha & Another versus Peter Kinuthia Mugacha.
13. On the first issue, counsel maintained that since the Respondent had not filed a Defence in the lower court matter, he was not entitled to instruction fees. He referred the court to principles stated by Odunga in Republic vs Competition Authority ex parte Ukwala Supermarket Ltd & Another [2017] eKLR and in First American Bank of Kenya vs Shah & Others [2002] 1 EA 64, which guided when the High Court could interfere with the Taxing Master's discretion. He emphasized that a Defence was the basis upon which full instruction fees accrued, and that in the absence of one, the award of instruction fees was erroneous.



14. Counsel further submitted that the Taxing Master had failed to consider the pleadings in determining the subject matter of taxation. He highlighted that the only prayers sought in the Plaintiff related to a declaration of trespass, eviction, mesne profits of Kshs. 250,000 per year, costs, and any other relief. He argued that the Taxing Master relied on an irregularly obtained valuation report annexed to the Respondent's Affidavit. According to him, the value of the property could only have been determined by evidence tendered at trial, or by a formal court-ordered valuation, not through a preliminary objection that was later withdrawn.
15. He relied on the Supreme Court's Judgment in Kenya Airports Authority vs Otieno Ragot & Co Advocates (Petition E011 of 2023) and the Court of Appeal's decision in Moronge & Co Advocates vs Kenya Airports Authority [2014] eKLR to underscore that subject matter value could not simply be inferred from speculative or indeterminate figures in pleadings or annexures. He therefore urged the court to limit instruction fees to the actual work done, which was opposing the interlocutory application by filing a Replying Affidavit, and to assess the fee at Kshs. 20,000 to prevent unjust enrichment.
16. On the second issue concerning disbursements, counsel challenged the award of Kshs. 95,000 for the valuation report. He argued that the receipt produced was not supported by an ETR receipt or proof that the Respondent had actually made the payment, and that such expenses, being in the nature of special damages, had to be strictly pleaded and proved at trial. He cited Hahn vs Singh [1985] KLR 716 to emphasize the requirement of strict proof, and Peter Muthoka & Another vs Ochieng & 3 Others [2019] eKLR to show the limited circumstances in which a court could interfere with the Taxing Master's discretion where misdirection or injustice was shown.
17. Counsel maintained that in this case, the Taxing Officer had improperly relied on an unproven valuation report, thereby inflating the subject matter value to Kshs. 24,000,000, which was speculative and unsupported. He therefore urged the court to disturb the taxation, set aside the award for both instruction fees and disbursements, and reassess them appropriately.
18. In conclusion, he submitted that the reference was merited and prayed that it be allowed with costs.

Respondents' Submissions

19. The Respondent filed submissions dated 21st April 2025. Counsel for the Respondent identified the following two issues for determination: (i) whether the Applicant is estopped from prosecuting the reference; and (ii) whether the value of the subject matter was ascertained.
20. On whether the Applicant is estopped from prosecuting the reference, Counsel for the Respondent argued that the Applicant was estopped from prosecuting the reference. She explained that estoppel was a principle of justice and equity. She stated that after the court delivered its ruling on 1st July 2022, the Applicant had initiated negotiations for settlement of the legal fees allowed by the court. Counsel pointed out that the Applicant had written a letter dated 14th November 2023, which was not marked "without prejudice," offering to settle the outstanding issues by payment of Kshs. 3,000,000 by the Respondent. She further noted that subsequent negotiations and correspondence followed on 16th January 2024, 10th February 2024, and 20th May 2024, which were annexed to the Respondent's Replying Affidavit dated 16th March 2025. In those letters, counsel observed, the parties had agreed that the Respondent would purchase a portion of the suit property for Kshs. 1,500,000.
21. She submitted that in all correspondence, the Applicant himself had acknowledged the sum of Kshs. 610,700 taxed off by the taxing officer, and had agreed that it would be paid to the Respondent's advocates and treated as part of the purchase price. Counsel emphasized that in his letter dated 20th



- May 2024, the Applicant had even indicated that he had conceded to withdraw the current suit. She argued that on the strength of those negotiations and agreements, the Respondent had gone ahead to make payments, some of which were made directly to the Applicant and acknowledged by him. In her view, the Applicant was therefore estopped from later denying the agreement, which had caused the Respondent to act to his detriment.
22. Counsel relied on the Court of Appeal decision in *John Mburu vs Consolidated Bank of Kenya* [2018] KECA 796 (KLR), where Justices Waki, Nambuye and Kiage dismissed an appeal by a party who had sought to renege on an agreement after the bank had released its security in reliance on that agreement. She noted that the court had held that it would be unjust to allow a party to resile from such an agreement. She also referred to *D & C Builders vs Sidney Rees* (1966) 2 QB 617, where Lord Denning had reiterated that once parties, by words or conduct, had led another to believe that strict legal rights would not be enforced, it would be inequitable to later insist on them.
 23. On the second issue, counsel argued that the value of the subject matter had been ascertained and was not disputed. She submitted that the Applicant had never objected to the valuation report presented to the court and had not sought leave to file an alternative report. She emphasized that the valuation fees were expressly pleaded in the Bill of Costs and supported by a receipt. She stated that the valuation report had placed the value of the subject property at Kshs. 24,000,000, and the Bill of Costs had been drawn on that basis. Item 3 of the Bill of Costs, she explained, had been computed at 75% of the instruction fees payable under Schedule 7(1)(b) of the Advocates Remuneration Order, which provides that where a suit is determined in a summary manner, the fee shall be 75% of the instruction fee chargeable.
 24. Counsel contended that the authorities cited by the Applicant were distinguishable from the present circumstances. She stressed that the Respondent had not been awarded full instruction fees but only 75% of the amount payable, since the suit was concluded summarily. She argued that the Applicant had not demonstrated any authority supporting denial of fees to a successful party. She further dismissed the Applicant's suggestion in his submissions for payment of Kshs. 20,000 for costs of the suit, as unsubstantiated, baseless, inordinately low, and not pleaded in the Application. According to her, the Applicant's reference had not identified any principle that the taxing master had relied on or omitted in arriving at her decision.
 25. Finally, counsel argued that the Taxing Master had not deviated from the prescribed scale of instruction fees. She pointed out that the Bill of Costs had been strictly drawn in accordance with the value of the subject matter, and that the instruction fees had in fact been reduced by 75% to comply with the Advocates Remuneration Order in respect of suits concluded summarily. She relied on the decision of *First American Bank of Kenya vs Shah & Others* [2002] 1 EA 64, where Justice Ringera held that a court could not interfere with a taxing officer's decision unless it was shown that the decision was based on an error of principle or that the award was so excessive or low as to imply such an error. She maintained that the Applicant had not demonstrated any such error, and therefore urged the court to dismiss the reference with costs to the Respondent.

Analysis and Determination

26. I have considered the Application and the response thereto, together with the parties' respective submissions as well as the authorities cited therein. I find only one issue for determination by this court:-
 - i. Whether the present Application constitutes a proper Reference.



27. The starting point is Rule 11 of the Advocates Remuneration Order, which provides the procedure for challenging a decision of a Taxing Officer. It provides that an objector is required to give written notice to the Taxing Officer, specifying the items objected to, within fourteen (14) days of the decision. The Taxing Officer is then obligated to record and forward the reasons for the decision to the objector. Upon receipt of the reasons, the objector may within fourteen (14) days file a chamber summons before a Judge setting out the grounds of objection.
28. The Court of Appeal in *Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board* [2005] eKLR was emphatic that a reference is only competent where it specifically challenges the decision of the Taxing Officer on identifiable items and where the mandatory procedure in Rule 11 has been followed.
29. In the instant matter, the Applicant filed a Chamber Summons dated 1st August 2022 seeking, inter alia, a stay of execution of the taxing officer's ruling. However, the prayers sought neither the setting aside nor the variation of the taxation. Further, the Applicant did not annex to the application either the ruling of the Taxing Officer or the bill of costs. This omission is not a mere procedural defect but goes to the substance of the Application, for without such documents, the court cannot meaningfully determine whether the Taxing Officer committed an error of principle. The court is deprived of the material necessary to interrogate the alleged errors in the impugned Ruling.
30. The court takes note that the Applicant had applied for a copy of the impugned Ruling, which had not been availed at the time of filing the Application in August of 2022. However, nothing prevented the Applicant from later filing the Ruling. Furthermore, no evidence has been given to show that the Applicant later followed up on obtaining the Ruling. Three years have lapsed from the date of delivery of the Ruling and from the date this Application was filed. Nothing justifies why the Ruling has not been filed to date.
31. A Reference under Rule 11 of the Advocates Remuneration Order must identify and challenge specific items from a decision of the Taxing Officer. Without supplying the decision and the Bill of Costs, the court cannot meaningfully assess the challenge. Secondly, evidence or issues not before the Taxing Officer cannot be raised in a Reference. Thus, to know what issues were before the Taxing Officer, the court needs the Taxing Officer's ruling reasons and the Bill of Costs as presented.
32. The Court of Appeal in *Ahmednasir Abdikadir & Co. Advocates vs National Bank of Kenya Ltd* (No. 2) [2006] 1 EA 5 underscored that strict compliance with Rule 11 is a jurisdictional matter and a judge has no power to entertain complaints outside the prescribed framework.
33. Accordingly, I am persuaded that the present Application does not constitute a proper reference within the meaning of Rule 11 of the Advocates (Remuneration) Order.
34. The Application herein thus fails, and the same is struck out with costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24TH DAY OF SEPTEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Kariuki for the Applicant



2. No appearance for the Respondent

Court Assistant: Hinga

