



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Giathita Farm Limited (Petition E012 of 2021) [2025] KEHC 13298 (KLR)  
(Commercial and Tax) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13298 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
PETITION E012 OF 2021  
AA VISRAM, J  
SEPTEMBER 25, 2025  
IN THE MATTER OF GIATHITA FARM LIMITED  
AND  
IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015  
AND  
IN THE MATTER OF SECTIONS 239, 240, 241,  
780, 782, 783 & 784 OF THE COMPANIES ACT**

**RULING**

**Introduction and Background**

1. Before me is the Respondent's Preliminary Objection dated 7<sup>th</sup> January, 2025, challenging the competency of the Petitioner's Reference arising from the taxation of a Party and Party Bill of Costs. The objection is grounded on the contention that the Reference was filed outside the statutory timelines prescribed under Paragraph 11 of the [Advocates Remuneration Order](#), and consequently this Court lacks jurisdiction to entertain the same.
2. The Petitioner opposes the Objection, contending that it does not meet the threshold established in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, that it offends his constitutional right to a fair hearing under Article 50 of the [Constitution](#), and that the Reference was in any event filed within time, or in the alternative, that any delay was excusable and curable under Article 159(2)(d) of the [Constitution](#).
3. I have considered the rival submissions, the authorities cited, and the record.

**The Law on Preliminary Objections**

4. The locus classicus on the subject remains *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, which requires that a proper Preliminary Objection must raise a pure



point of law, founded on uncontested facts, capable of disposing of the matter without recourse to evidence or discretion. Where the court is required to investigate facts or exercise judicial discretion, the objection fails to qualify.

### **Parties' Positions**

5. The Respondent submits that under Paragraph 11 of the Advocates Remuneration Order, a party aggrieved by a taxation ruling must lodge a notice of objection within 14 days and file a Reference within 14 days from receipt of reasons. It is argued that the ruling was delivered on 25<sup>th</sup> November, 2024, uploaded on 27<sup>th</sup> November, 2024, and the Reference was filed on 19<sup>th</sup> December, 2024, which is outside the statutory 14 days. The Respondent contends that these timelines are jurisdictional and not procedural, and that failure to comply renders the Reference incompetent, citing *George Miyare t/a Miyare & Co. Advocates v Evans Gor Semelang'o* [2019] eKLR and *Amuga & Co. Advocates v Joyce Nzisa & 4 Others* [2015] eKLR.
6. The Petitioner on the other hand argues that the ruling of 25<sup>th</sup> November, 2024, did not contain reasons, and he duly requested reasons on 26<sup>th</sup> November, 2024. He submits that time began to run only upon receipt of reasons on 17<sup>th</sup> December, 2024, and thus the Reference filed on 19<sup>th</sup> December, 2024, was within time. He further urges that the Objection raises disputed factual issues, notably whether the ruling contained reasons, and that such matters cannot be determined by way of a Preliminary Objection. He invokes Article 50 on the right to a fair hearing and Article 159(2)(d) to argue against undue reliance on technicalities.

### **Analysis**

7. The critical issue is whether the Preliminary Objection satisfies the threshold in *Mukisa Biscuit* (supra). For the objection to succeed, it must be based on settled and uncontested facts. Here, the Respondent asserts that reasons were contained in the ruling delivered on 25<sup>th</sup> November, 2024, and uploaded on 27<sup>th</sup> November, 2024. The Petitioner disputes this, arguing that the ruling contained no reasons, prompting him to request them on 26<sup>th</sup> November, 2024, and only receiving them on 17<sup>th</sup> December, 2024. This factual controversy goes to the root of whether the Reference was filed in time.
8. It is therefore evident that the Court is invited to determine, on evidence, whether the ruling indeed contained reasons sufficient to trigger the 14-day period under Paragraph 11(2). This is a contested matter of fact which cannot properly be resolved within the narrow confines of a Preliminary Objection.
9. Moreover, this Court has previously observed that questions such as whether or not reasons were supplied are not purely a matter of law but often require reference to the record. Such issues fall outside the ambit of a Preliminary Objection.
10. In light of this, the Respondent's objection does not meet the strict test under *Mukisa Biscuit* (supra). It is accordingly incompetent.

### **Disposition**

11. The Preliminary Objection dated 7<sup>th</sup> January, 2025, is hereby dismissed with costs to the Petitioner. The Reference shall proceed to be heard on its merits.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**ALEEM VISRAM, FCIArb**



**JUDGE**

In the presence of;

Court Assistant: Lisper

