



**Mbugua t/a Martha Mbugua Company Advocates v Manza Consultancy Limited
(Kenya) t/a JST Work (Commercial Miscellaneous Application E070 of 2025)
[2025] KEHC 13889 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E070 OF 2025**

**MN MWANGI, J
SEPTEMBER 26, 2025**

BETWEEN

**MARTHA MBUGUA T/A MARTHA MBUGUA COMPANY
ADVOCATES ADVOCATE**

AND

MANZA CONSULTANCY LIMITED (KENYA) T/A JST WORK CLIENT

RULING

1. The Advocate/applicant filed a Chamber Summons application dated 23rd January 2025 pursuant to the provisions of Paragraph 11(2) of the Advocates (Remuneration) Order, seeking orders that this Court vacates and sets aside the Taxing Master's ruling delivered on 9th January 2025, and refers the Advocate/Client Bill of Costs dated 11th April 2019 for fresh taxation before another Taxing Master, or in the alternative, this Court taxes the said bill itself.
2. The application was premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Ms Linda Aluvale, an Advocate of the High Court of Kenya and learned Counsel for the applicant.
3. In opposition to the Reference, the client/respondent filed a Notice of Preliminary Objection dated 17th February 2025 raising the following grounds –
 - i. The application by the applicant herein offends Paragraph 11(1) of the Advocates Remuneration Order by reason of which this Honourable Court (being an Appellate Court on the applicant's dismissed bill of costs) is divested of jurisdiction to adjudicate on any aspect of the Chamber Summons dated 23rd January 2025, as it was filed out time; and



- ii. The Chamber Summons dated 23rd January 2025 is fatally defective as the decision of the Taxing Master sought to be appealed against was rendered on 9th January 2025 and the subject Chamber Summons was filed on 24th January 2025.
4. In opposition to the applicant's Notice of Preliminary Objection, the respondent filed a supplementary affidavit sworn on 25th March 2025 by Ms Linda Aluvale, an Advocate of the High Court of Kenya and learned Counsel for the applicant. Ms. Aluvale confirmed that the Taxing Master's Ruling on the bill of costs dated 11th April 2019 was delivered on 9th January 2025 and that on 13th January 2025, they received official notification via text from the Judiciary indicating the case status as "Ruling delivered – case closed."
5. She averred that upon obtaining the Ruling from the e-filing portal on the same day, they noted that it was a reasoned Ruling, thus eliminating the need to notify the Taxing Officer of specific items objected to. Ms. Aluvale asserted that pursuant to the provisions of Paragraph 11(2) of the Advocates Remuneration Order, since the Taxing Officer's Ruling was obtained on 13th January 2025, the deadline to file a reference against it was 27th January 2025. She stated that the instant Reference having been filed on 24th January 2025, was filed within time.
6. The instant application was canvassed by way of written submissions. The respondent's submissions were filed on 25th February 2025 by the law firm of J. Harrison Kinyanjui & Company Advocates, whereas the applicant's submissions were filed by the law firm of Ngige Aluvale Advocates LLP Advocates on 25th March 2025.
7. Mr. Harrison Kinyanjui, learned Counsel for the respondent relied on the Supreme Court case of *Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] KESC 8 (KLR) and the Court of Appeal case of the *Owners of Motor Vessel "Lilian s" v Caltex Oil (K) Ltd* [1989] KLR 1, and submitted that this Court's jurisdiction to hear and determine the applicant's application dated 23rd January 2025 has not been properly invoked. Counsel referred to Paragraph 11(1) of the Advocates Remuneration Order and contended that the applicant's Reference against the Taxing Officer's Ruling delivered on 9th January 2025 was filed out of time.
8. He argued that under the aforesaid provisions, the reference ought to have been filed within 14 days, that is on or before the 23rd January 2025, but was lodged on 24th January 2025 as per the Case Tracking System. She asserted that since timelines under statute are strict and jurisdictional, the Reference is incompetent and liable to be struck out. To buttress these submissions, Counsel relied on the Court of Appeal decisions in *Mario Rossi v Salama Beach Hotel Limited* [2018] KECA 142 (KLR) and *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR), and the case of *KCB Bank Limited & another v Yeswa Antony Joseph* [2022] KEHC 2868 (KLR).
9. Ms Aluvale, learned Counsel for the applicant relied on the Court of Appeal case of *Mukisa Biscuits Manufacturing Co. Limited v West End Distributors Ltd* (1969) EA 696, and submitted that the respondent's Notice of Preliminary Objection is improper because it raises a factual dispute. She maintained that since the Taxing Officer's Ruling was obtained on 13th January 2025, and the Reference filed on 24th January 2025, it was filed within the 14-day limit under Paragraph 11(2) of the Advocates Remuneration Order. Counsel argued that since the impugned Preliminary Objection requires the Court to investigate and determine contested facts, it fails to meet the threshold of a proper Preliminary Objection and should be dismissed with costs.
10. Counsel relied on the cases of *Ashiruma t/a Ashiruma & Co Advocates v Mainigi & another* [2025] KEHC 263 (KLR) and *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* (2)



(2006) 1 EA 5, and contended that since the Ruling by the Taxing Officer delivered on 9th January 2025 was reasoned, it was not necessary to give a Notice of Objection to the Taxing Master. She submitted that under Paragraph 11(2) of the Advocates Remuneration Order, time runs from receipt of the Ruling containing the reasons for the decision, and since the applicant obtained the Taxing Officer's Ruling on 13th January 2025, the deadline for filing a Reference against it was 27th January 2025, making the instant Reference as having been filed within time, as it was filed on 24th January 2025. To this end, Counsel cited the cases of Oracle Technology Systems (Kenya) Limited v Aluodo [2025] KEELRC 409 (KLR) and In re of Umoja Services Station Limited [2018] KEHC 10189 (KLR). Ms Aluvale asserted that even if there was a delay of one day, it would not be inordinate.

Analysis And Determination.

11. I have considered the respondent's Notice of Preliminary Objection, the applicant's supplementary affidavit and the written submissions by Counsel for the parties. The issue that arises for determination is whether the instant Notice of Preliminary Objection should be sustained.

12. In order for a Preliminary Objection to succeed, it must raise a pure point of law. It must be argued on the assumption that all the facts pleaded by the opposing party are correct, and it cannot be sustained where any fact requires proof or where the Court is called upon to exercise its discretion. What constitutes a valid Preliminary Objection was addressed by the Court of Appeal in the case of Mukisa Biscuits Manufacturing Ltd v West End Distributors Ltd [1969] EA 696 as hereunder -

So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

13. Further, in the said case Sir Charles Newbold P., stated as follows-

... the first matter related to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.

14. The respondent's Notice of Preliminary Objection is anchored on the ground that the Reference herein is incompetent as it was filed out of time, contrary to the provisions under Paragraph 11(1) of the Advocates Remuneration Order. The respondent contended that since the Taxing Officer's decision was delivered on 9th January 2025 and the Reference was filed on 24th January 2025, it is fatally defective hence this Court lacks jurisdiction to entertain it.

15. The Advocate/applicant filed a supplementary affidavit to oppose the respondent's Notice of Preliminary Objection. It needs to be stated as has been done in a plethora of cases that since a Preliminary Objection is supposed to raise only issues of law, it cannot be responded to by way of an affidavit. Submissions are adequate in addressing legal issues raised in such an Objection.



16. It is evident that the respondent did not comply with the provisions of Paragraph 11(1) of the Advocates Remuneration Order. In its submissions, the respondent contends that compliance with the said provisions is not mandatory where the Taxing Officer's Ruling already contains the reasons for taxation, as is the case herein. The respondent maintains that the instant Reference was filed within the prescribed time.
17. In light of the foregoing, it is apparent that a factual dispute exists as to when the time for filing the Reference against the Taxing Officer's decision begun to run, a matter that calls for this Court to consider evidence, including the date on which the applicant received the Taxing Officer's Ruling.
18. The question of whether or not this Court's jurisdiction to hear and determine this Reference was properly invoked is central in this matter. Courts have repeatedly held that the issue of jurisdiction need not be raised by the parties to the suit, as the Court may suo moto determine whether it has jurisdiction, particularly where lack of jurisdiction is inferred from the pleadings.
19. In the case of the Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, Nyarangi, JA. held as follows –

...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
20. The procedure for objecting to a Taxing Officer's decision is provided for under Paragraph 11(1) & (2) of the Advocates Remuneration Order which states that –
 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.
21. Prior to the filing of the Reference against the Taxing Officer's Ruling delivered on 9th January 2025, the applicant did not comply with Paragraph 11(1) of the Advocates Remuneration Order, which obligates a party to issue the Deputy Registrar with a Notice of Objection. In the oft cited case of Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited [2017] KEHC 1032 (KLR), the Court in striking out a Reference held the following -

...the provisions of Paragraph 11 of the Remuneration Order serve several purposes. Firstly, the requirement that a party seeking reasons gives a notice of items objected to, serves to narrow down the issues, and secondly, give notice to the adverse party and the taxing master of his objection. Thus, the taxing master, adverse party and ultimately the reference court in their respective roles can focus on the specific matter objected to rather than entire bills of costs, which often run into several pages. The objective is obvious: the expeditious disposal of taxation disputes. Thus, compliances with the requirements of paragraph 11 of the Remuneration Order is not a mere technicality that can be pushed aside peremptorily as the Applicant appears to suggest.



22. It is worth noting that the applicant neither sought leave nor applied for an extension of time to comply with the provisions of Paragraph 11(1) of the Advocates Remuneration Order prior to, or at the time of filing the Reference herein, in order to properly invoke the jurisdiction of this Court.
23. A Court's jurisdiction to hear and determine a reference is invoked upon compliance with the provisions of Paragraph 11(1) of the Advocates (Remuneration) Order. Further, this Court is of the considered view that a Notice of Objection serves a role akin to that of a Memorandum of Appeal. Consequently, failure to file and serve such a Notice is not a mere procedural lapse that can be cured by the provisions of Article 159(2)(d) of *the Constitution* in the name of substantive justice. Non-compliance is fatal, as it strikes at the very root of the High Court's jurisdiction to hear and determine a Reference.
24. In the case of Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others [2016] KESC 2 (KLR), the Supreme Court of Kenya weighed in on the importance of adherence to the laid down procedure in approaching a Court of law as hereunder -

This court has on a number of occasions remarked upon the importance of rules of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case, that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the Court would not hesitate to declare the attendant pleadings incompetent.

Yet procedure, in general terms, is not an end in itself. In certain cases, insistence on a strict observance of a rule of procedure, could undermine the cause of justice. Hence the pertinence of Article 159(2) (d) of *the constitution*, which proclaims that, "...courts and tribunals shall be guided by...[the principle that] justice shall be administered without undue regard to procedural technicalities". This provision, however, is not a panacea for all situations befitting judicial intervention; and inevitably, a significant scope for discretion devolves to the courts.

25. In the circumstances, this Court holds that adherence to Paragraph 11(1) of the Advocates Remuneration Order is mandatory and non-compliance with the provisions thereunder is fatal.
26. The upshot is that the instant Reference is fatally defective. It is hereby struck out with costs to the Client/respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF SEPTEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Ms Jumba h/b for Ms Aluvale for the Advocate/applicant

No appearance for the Client/respondent

Ms B. Wokabi – Court Assistant.

