

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO. 105 OF 2019

PROF. KAREGA MUNENE.....
CLAIMANT/APPLICANT

VERSUS

UNITED STATES INTERNATIONAL
UNIVERSITY.....RESPONDENT

RULING

1. For determination are the Claimant/Applicant's Chamber Summons application dated 5th March, 2025, brought pursuant to Section 12 of the Employment and Labour Relations Court Act, Section IA, 1B, 3, 3A of the Civil Procedure Act, and Rule 11 of the Advocates Remuneration Order and a Preliminary Objection by the Respondent. Under the Chamber summons application, the Applicant seeks orders THAT: -
 - i. The Honourable Court be pleased to review and/or set aside the decision of the Taxing Officer delivered on the 30th January, 2025 Taxing and/or certifying costs due payable to the Claimant/Applicant by the Respondents at Kshs.595,701/=.

- ii. The cost of this application be in the cause.
2. In the Notice of Preliminary Objection, the Respondent prays that the Claimant/Applicant's application be struck out on the premise that it is fatally defective and bad in law *ab initio* on the grounds, namely: -
- a) That the Reference is time-barred, having been brought outside the Fourteen-day period stipulated under Rule 11 of the Advocates Remuneration Order, 2014, and therefore, is a non-starter.
 - b) The Reference fails to specify the items to which the Claimant objects regarding their taxation, which failure violates the provisions of Rule 11 (2) of the Advocates Remuneration Order, 2014.
 - c) That the Reference is otherwise untenable and bad in law and should ipso facto be struck out/ dismissed with costs to the Respondent.
3. Both the Preliminary Objection (P.O) and the application were canvassed by way of written submissions and submissions were received from both parties. I will proceed to deal with the P.O and thereafter, the application, if need be.

The Respondent's Submissions

4. The Respondent submits that it is a set principle that a Judge cannot interfere with the Taxing Officer's decision on taxation unless it is shown that the decision was based on an error of principle. It placed reliance in the Court of

Appeal's decision in ***Kipkorir, Tito & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR***, where the court observed: -

'On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.'

5. It is the Respondent's submission that the reference as drawn does not clearly specify the particular item on which the Claimant faults the Taxing Master, having abandoned the Claim for Kshs.2,550,000/- as instructions fees, and urges the Court to award him Kshs.750,000/=as the instruction fees.
6. It submits further that the Claimant is attempting to mislead this Honourable Court by advancing arguments unknown in law on how Instructions Fees should be calculated, and prays that the Court rejects these attempts and find that the Taxing Master correctly used the prescribed graduated scale.
7. The Respondent submits that the present Reference is time-barred, having been filed thirty-four (34) days out of time. It submits that contrary to the Claimant's assertions, it was not necessary for him to await separate reasons from the Taxing Master before lodging this Reference as there

was no obligation on the part of the Taxing Master to issue additional reasons, as the Ruling was comprehensive and clearly set out the basis for the taxation of the various items.

8. In buttressing the foregoing submission, the Respondent sought to rely in Hon. Justice G.V. Odunga's decision in ***Miscellaneous Application 343 of 2011- Evans Thiga Gaturu, Advocate Vs Kenya Commercial Bank Limited***, for the holding that;

'In most cases, the court is aware that taxing officers, in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons, thereafter. In such circumstances, it would be foolhardy to expect the taxing officer to redraft another "ruling" containing the reasons.'

9. The Respondent finally submits that the Learned Taxing Master rightfully taxed the Bill of Costs including all the items therein, and that contrary to the Claimant's assertions, there is nothing in her decision that would justify this Honourable Court interfering with or setting it aside.

10. The Respondent urges the Court to find the Reference untenable, devoid of merit and accordingly uphold the decision of the Taxing Master.

The Claimant/Applicant's Submissions

11. The Claimant/Applicant submits that he elected to write to the Taxing Officer indicating that he objects the instruction fees and getting up fees awarded and which was within the meaning of Paragraph 11 (1) of the ARO which was done through the letter dated 30th January, 2025, the same day that the ruling was delivered, and therefore the Claimant/Applicant complied with the strict timelines.

12. The Applicant had reliance ***in ELRC Misc. Civil Application No. 13 of 2015 between Kinyua Muyaa & Co. Advocates v Kenya Ports Authority Oensin Scheme & 8 others***, where the Court held thus;

"From the foregoing analysis it is clear that both references before me are competent. In this case, the taxing officer rendered a written ruling on 21/10/2016. The client sought/or reasons/or the decision of the taxing officer in all the items in the bill of costs vide her notice of objection dated 25/10/2016 while the Advocate sought for the same under his notice dated 21/10/2016. The Taxing Officer delayed to forward the reasons to either party and after waiting until 14/12/2016, the client

exercised her option of filing her reference after allegedly getting the reasons from the ruling by the taxing officer on 7.12.2017.”

13. The Applicant submits that Paragraph 11(2) of the Advocates Remuneration Order provides that upon the Taxing Officer receiving the objection letter, the Taxing Officer shall forward his reasons forthwith.
14. It submits further that it is mandatory that the Taxing Officer responds to the objection letter, and that the Taxing Officer has never responded to the Claimant/Applicant's letter despite the mandatory provisions of Paragraph 11(2) of the ARO, prompting the filing of the reference.
15. The Applicant prays that the Honourable Court dismisses the Notice of Preliminary Objection with costs.
16. On the application, the Applicant submits that the Taxing Officer erred in principle in awarding instruction fees at Kshs.365,625/= as she did not consider the graduated levels as provided in the Advocates Remuneration Order.
17. The Applicant further submits that Kshs.15,531,275/= falls within the third graduated level under the ARO of Kshs.750,000 - 1,000,000 and therefore Kshs.120,000/= is also due as costs at the third graduated level.

18. It is the Applicant's submission that the fees payable as instruction fees is Kshs.730,625.50/= and therefore the Taxing Officer erred in awarding instruction fees at Kshs.595,701/=.

19. The Applicant finally urges the Honourable Court to tax the Bill and allow the instruction fees of Kshs.730,625.50/= and also allow the getting up fees of Kshs.243,541.83/= making a total of Kshs.974,167.33/=.

Determination

20. The issues that present for my determination are:

- i. Whether the Reference is time barred; and if not
- ii. Whether the Reference has merit.

Whether the Reference is time barred

21. Paragraph II of the Advocates (Remuneration) Order states thus: -

" (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.

(3) 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.

(4) 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."

22. It is not disputed that a reference such as the one before court should have been filed within 14 days of receipt of reasons from the Taxing Officer. The Applicant's contention is that he did not receive reasons even though he had sought for the reason within time.

23. In advancing the assertion that the Reference was filed outside the 14 days' timeline, the Respondent argues that the Reference having been filed thirty-four (34) days out of

time, is time barred. It is its position that it was not necessary for the Applicant to await separate reasons from the Taxing Master before lodging this Reference as there was no obligation on the part of the Taxing Master to issue additional reasons, as the Ruling was comprehensive and clearly set out the basis for the taxation of the various items.

24. Other than waiting to receive reasons for the taxation, the Applicant has not explained or given reasons for the delay in filing the Reference. Odunga J in the case of **Evans Thiga Gaturu -Vs- Kenya Commercial Bank Limited [2012] eKLR**, had this to say on reasons for taxation: -

“In most cases the court is aware that the taxing officers in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons thereafter. In such circumstances, it would be fool hardy to expect the taxing officer to redraft another “ruling” containing reasons.”

25. The ruling of the Taxing Master is complete with a table of the reasons informing the said decision. It is therefore superfluous for the Applicant to purport to have been waiting to receive reasons, while the reasons clearly formed part of the ruling. In **Ahmed Nassir -Vs- National Bank of Kenya Ltd [2006] E.A** the court held thus: -

“Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of Sub-rule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

26. Further, although Paragraph 11(4) of the ARO allows enlargement of time to lodge a reference, no such leave was sought in the instant case. In ***KTK Advocates v. Nairobi City County (2023) KEELC***, the court struck out a reference that was filed out of time without leave to extend time. The court emphasized that even though Rule 11(4) gives discretion for enlargement of time, a party must seek leave for such extension.

27. In this matter, even after the Preliminary objection was filed, the Applicant did not deem it necessary to seek leave for enlargement of time.

28. In the upshot, I find the Respondent's Preliminary Objection merited and the Claimant/Applicant's reference time barred, and is hereby struck out with no orders on costs.

ORIGINAL

29. Orders accordingly.

**SIGNED, DELIVERED AND DATED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025.**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Okondo h/b for Ms. Guserwa for the Claimant/Applicant

Mr. Ashitiva present for the Respondent

Ms. Esther S - C/A