



**Paul Maingi Musyimi t/a Musyimi & Associates Advocates v Jack & Jill  
Supermarket Limited (Commercial Miscellaneous Application E152 of 2024)  
[2025] KEHC 14525 (KLR) (Commercial and Tax) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E152 OF 2024**

**MN MWANGI, J**

**OCTOBER 3, 2025**

**BETWEEN**

**PAUL MAINGI MUSYIMI T/A MUSYIMI & ASSOCIATES  
ADVOCATES ..... ADVOCATE**

**AND**

**JACK & JILL SUPERMARKET LIMITED ..... CLIENT**

*(A reference from the Ruling delivered on 14th October 2024  
by Hon. Chembeni L. Adisa, sitting as a Taxing Officer)*

**RULING**

1. Before me is a Chamber Summons application dated 30<sup>th</sup> October 2024 filed by the client/applicant pursuant to the provisions of Order 11 & Section 51(2) of the Advocates Remuneration Order 1962, as amended. The client prays for an order that the Deputy Registrar's decision on the Advocate/Client bill of costs be set aside and/or alternatively, that the said bill be marked as settled based on the existing fee agreement between the Advocate and the Client.
2. The application is anchored on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Mr. Schon Noorani, on behalf of the client herein. He averred that upon delivery of the Taxing Master's Ruling on 14<sup>th</sup> October 2024, he instructed his Advocates on record to file a Notice of Objection to the said decision under the provisions of Rule 11 of the Advocates Remuneration Order, which Notice was filed on the same day. He stated that he had previously filed an application under Section 45 of the *Advocates Act*, on grounds that the fees had already been settled under a Retainer Agreement for Kshs.1,800,000/=, which the Advocate acknowledged in writing.



3. Mr. Noorani stated that the Taxing Officer dismissed the said application without inviting him to make submissions on the pending bill in violation of procedural fairness. He asserted that the Taxing Officer failed to consider his position, did not provide reasons for rejecting the existence of a fee agreement, and wrongly proceeded to tax the Advocate's bill of costs. He claimed to have overpaid the Advocate and stated that he believes that allowing further taxation would amount to extortion. He asked this Court to find that a valid Retainer Agreement existed and to declare the bill of costs illegal and fully settled.
4. In opposition to the Reference herein, the Advocate filed a replying affidavit sworn on 6<sup>th</sup> November 2024 by Mr. Paul Maingi Musyimi, an Advocate of the High Court of Kenya. He averred that the instant Reference is procedurally flawed for failing to comply with Rule 11 of the Advocates Remuneration Order as the letters dated 14<sup>th</sup> & 28<sup>th</sup> October 2024 do not object to the Ruling on the application dated 10<sup>th</sup> June 2024, but rather only to items 1 - 48 of the bill of costs, and do not raise the issue of a retainer. He contended that the said Notice of Objection was not properly filed through the official CTS e-filing system, which made the Reference time-barred and procedurally defective.
5. Mr. Musyimi asserted that the Taxing Officer acted correctly in finding that no retainer existed, as previously substantiated in a replying affidavit sworn on 28<sup>th</sup> June 2024. He urged this Court to expunge documents attached to the client's affidavit in support of the instant Reference on grounds that they were not produced before the Taxing Officer, thus they amount to new evidence introduced improperly. He averred that the alleged retainer fails to meet the legal requirements under Section 45 of the *Advocates Act*.
6. In a rejoinder, the client filed a further affidavit sworn on 15<sup>th</sup> November 2024 by Mr. Schon Noorani, on behalf of the client herein. He contended that both the Notice of Objection and the follow-up letter dated 28<sup>th</sup> October 2024 fall within the time frame prescribed under Rule 11 of the Advocates Remuneration Order. Mr. Noorani stated that the Taxing Officer erred by taxing the Advocate's bill without it being fixed for hearing or inviting submissions from parties, thereby violating the client's right to be heard under Articles 47 & 50 of *the Constitution* of Kenya and the Fair Administrative Actions Act. Mr. Noorani averred that the Taxing Officer failed to provide reasons for her Ruling, and taxation proceeded without considering the existence of a Retainer Agreement, which included handwritten and email confirmation from the Advocate. He maintained that the Advocate's bill of costs should not have been taxed, as there was a valid Retainer Agreement in place which bars taxation under settled legal principles.
7. The application herein was canvassed by way of written submissions. The client's submissions were filed on 3<sup>rd</sup> February 2025 by the law firm of Abuodha & Omino Advocates, while the Advocate's submissions were filed by the law firm of Maingi Musyimi & Associates Advocates on 4<sup>th</sup> February 2025.
8. Mr. Omino, learned Counsel for the client submitted that there was a Retainer Agreement between the parties herein, which renders the Advocates bill of costs illegal and the Taxing Officer's decision to be without jurisdiction pursuant to the provisions of Section 45 of the *Advocates Act*. To this end, Counsel relied on the case of Archbolds (Freightage) Ltd v S Spanglett Ltd [1961] 1 QB 374, at page 388 cited with authority by the Court of Appeal in Njogu & Company Advocates v National Bank of Kenya Limited [2016] KECA 85 (KLR). Mr. Omino argued that a valid Retainer Agreement existed between the client and the Advocate for legal services, under which the total fees for all related matters was agreed at Kshs.700,000/=. He asserted that an initial payment of Kshs.350,000/= was made and acknowledged by the Advocate, who later confirmed in an email that the total agreed fees amounted to Kshs.800,000/=.



9. Mr. Omino submitted that the client made a cash payment of USD 100,000.00 equivalent to approximately Kshs.10,000,000/=, for all legal services, a sum he claims was acknowledged by the Advocate, but the Advocate later repudiated the Retainer Agreement without providing any valid justification and is now dishonestly denying receipt of the dollar payment, by falsely alleging it was only Kshs.100,000/=. He further contended that the Advocate's bill of costs failed to reflect prior payments, including a deposit of Kshs.350,000/= and Kshs.70,000/= for filing fees. Mr. Omino maintained that the Advocate had not denied signing the Retainer Agreements, which confirms the existence of a valid and binding retainer, under which the agreed fees were fully settled.
10. Mr. Maingi, learned Counsel for the Advocate relied on the case of *Ufundi Co-operative Savings and Credit Society v Njeri Onyango & Company Advocates* [2015] KEHC 4070 (KLR) and submitted that the client did not file a written Notice of Objection within the 14-day period required under Rule 11 of the Advocates Remuneration Order. He further submitted that no objection letter was filed with the Court on 14<sup>th</sup> October 2024 as evidenced by a screenshot from the Judiciary's e-filing portal. He argued that the client failed to invoke Rule 11(4) of the Advocates Remuneration Order to seek an extension of time. He contended that pursuant to the provisions of Rule 11(1) of the Advocates Remuneration Order, an objection to a Ruling on taxation must be specifically set out in writing to the Taxing Officer.
11. Mr. Maingi contended that in the alleged objection letters dated 14<sup>th</sup> & 28<sup>th</sup> October 2024, the client stated that he objected only to items Nos. 1 - 48 of the Advocates bill of costs, and the existence of a retainer was not among the items objected to, hence it should not be considered in the Reference. He relied on the case of *Independent Electoral and Boundaries Commission & another v Mule & 3 others* [2014] KECA 890 (KLR) and invoked the principle that parties are bound by their pleadings. Counsel submitted that failure to annex a Certificate of Costs and the Taxing Officer's Ruling to the application herein, is a material procedural defect. He argued that the client has failed to demonstrate any error of principle by the Taxing Officer in rejecting the claim of a Retainer Agreement.
12. Mr. Maingi submitted that the Taxing Officer correctly relied on the provisions of Section 45 of the *Advocates Act* and the case of *Omulele & Tollo Advocates v Mount Holdings Limited* [2016] KECA 523 (KLR). He stated that Section 45 of the *Advocates Act* requires that a valid Retainer Agreement must be in writing and signed by the client or their authorized agent, but in this case no such valid agreement has been presented. To buttress these submissions, Mr. Maingi referred to the case of *Lubulellah & Associates v Gilbi Construction Company Limited* [2024] KEELC 7416 (KLR), to affirm the need for strict compliance with these formal requirements, in order for a fee agreement to be enforceable. Counsel asserted that the taxed costs were neither excessive nor unreasonable, and no basis has been provided to warrant the Court's interference with the Taxing Officer's discretion.

### **Analysis And Determination.**

13. Having considered the instant application, the grounds on the face of it and the affidavits filed in support thereof, the replying affidavit by the Advocate and the written submissions by Counsel for the parties, the issues that arise for determination are –
  - i. Whether the instant Reference is fatally defective for want of compliance with the provisions of Rule 11 of the Advocates Remuneration Order; and
  - ii. Whether the instant Reference is merited.



**Whether the instant Reference is fatally defective for want of compliance with the provisions of Rule 11 of the Advocates Remuneration Order.**

14. The Advocate contends that the clients failed to comply with provisions of Rule 11 of the Advocates Remuneration Order, thereby rendering the instant application fatally defective. The procedure for objecting to a Taxing Officer's decision is provided for under Rule 11 of the Advocates Remuneration Order which states as hereunder –

Objection to decision on taxation and appeal to Court of Appeal

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.
15. On 14<sup>th</sup> October 2024, the Taxing Officer delivered a Ruling on the Advocate's bill of costs dated 22<sup>nd</sup> February 2024 and an application dated 10<sup>th</sup> June 2024. Being dissatisfied with the Ruling, the client was required to file a Notice of Objection with the Taxing Officer, in accordance with Rule 11(1) of the Advocates Remuneration Order, specifying the aspects of the decision it was objecting to, and request for reasons for the decision. The client asserted that he complied with this requirement by submitting a Notice of Objection dated 14<sup>th</sup> October 2024, which was sent via email on 15<sup>th</sup> October 2024, and later followed up by a reminder vide a letter dated 28<sup>th</sup> October 2024.
16. It is apparent that the said objection was not filed through the Case Tracking System (CTS), which is the Judiciary's official portal for filing of pleadings and tracking of cases. While I acknowledge that two filing methods exist, that is, the CTS and email, pleadings submitted via email are only deemed to be properly filed when the CTS is down and the Judiciary has issued a Notice permitting filing of pleadings via email. In this case, the client has neither alleged nor demonstrated any reason for bypassing the CTS when filing the Notice of Objection under Rule 11 of the Advocates Remuneration Order, especially considering that all his other pleadings and submissions in this matter have consistently been filed through the CTS.
17. Additionally, although the client asserts that the Notice of Objection dated 14<sup>th</sup> October 2024 was filed via email on 15<sup>th</sup> October 2024, no evidence to substantiate the said allegation has been tendered. The email communication annexed to the client's further affidavit was sent on 28<sup>th</sup> October 2024 and no evidence has been provided to show that the Notice of Objection dated 14<sup>th</sup> October 2024 was ever filed. Further, there is no acknowledgment or official stamp from the Taxing Officer or Court Registry



confirming receipt of the said objection or the alleged letter of reminder dated 28<sup>th</sup> October 2024 via email.

18. This Court is of the considered view that while a Notice of Objection may have been drafted and sent by email, the procedural requirements of Rule 11(1) of the Advocates Remuneration Order, and particularly, the requirement for the Notice to be formally and verifiably filed with the Taxing Officer within 14 days, do not appear to have been satisfied in the manner recognized by the Court system. Therefore, strictly speaking, there was non-compliance with Rule 11(1) of the Advocates Remuneration Order. In the oft cited case of *Matiri Mburu & Chepkemboi Advocates vs Occidental Insurance Company Limited* [2017] eKLR, the Court in striking out a Reference held that -

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 preemptorily as the Applicant appears to suggest.

19. This Court's jurisdiction to hear and determine a Reference is dependent on strict compliance with Rule 11(1) of the Advocates Remuneration Order. Further, this Court is of the considered view that a Notice of Objection is akin to a Memorandum of Appeal, serving a foundational role in initiating the Reference process. Consequently, failure to file and serve a Notice of Objection is not a mere procedural lapse that can be cured under Article 159(2)(d) of *the Constitution* of Kenya, in the name of substantive justice. To the contrary, non-compliance is fatal as it undermines the Court's jurisdiction to hear the Reference. In the case of *Moses Mwigigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR, the Supreme Court of Kenya considered the importance of adherence to laid down procedures 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.

20. This Court holds that compliance with the provisions of Rule 11(1) of the Advocates Remuneration Order is mandatory, and failure to comply with the said provisions is fatal.
21. It is therefore my finding that this Court's jurisdiction has not been properly invoked. I as such hold that I have no jurisdiction to hear and determine the Reference herein on merits. I accordingly down



my tools as was held by the Court of Appeal in the case of the Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd (supra).

22. The upshot is that the instant application is fatally defective. It is hereby struck out with costs to the Advocate.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Mr. Owino for the client/applicant

Mr. Maingi for the Advocate/respondent

Ms B. Wokabi – Court Assistant.

